

**63G-6a-101. Title.**

- (1) This chapter is known as the "Utah Procurement Code."
- (2) This part is known as "General Procurement Provisions."

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-102. Purpose of chapter.**

The underlying purposes and policies of this chapter are:

- (1) to simplify, clarify, and modernize the law governing procurement in the state;
- (2) to ensure the fair and equitable treatment of all persons who deal with the procurement system;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Amended by Chapter 196, 2014 General Session

**63G-6a-103. Definitions.**

As used in this chapter:

- (1) "Architect-engineer services" means:
  - (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
  - (b) professional engineering as defined in Section 58-22-102; or
  - (c) master planning and programming services.
- (2) "Bidder" means a person who responds to an invitation for bids.
- (3) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- (4) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- (5) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).
- (6) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
  - (a) except:
    - (i) reviewing a solicitation to verify that it is in proper form; and
    - (ii) causing the publication of a notice of a solicitation; and
  - (b) including:
    - (i) preparing any solicitation document;
    - (ii) appointing an evaluation committee;
    - (iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(5)(b) relating to scores calculated for costs of proposals;
    - (iv) selecting and recommending the person to be awarded a contract;
    - (v) negotiating the terms and conditions of a contract, subject to the issuing

procurement unit's approval; and

(vi) administering a contract.

(7) (a) "Construction" means the process of building, renovating, altering, improving, or repairing a public building or public work.

(b) "Construction" does not include the routine operation, routine repair, or routine maintenance of an existing structure, building, or real property.

(8) (a) "Construction manager/general contractor" means a contractor who enters into a contract for the management of a construction project when the contract allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services.

(b) "Construction manager/general contractor" does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(9) "Contract" means an agreement for the procurement or disposal of a procurement item.

(10) "Contractor" means a person who is awarded a contract with a procurement unit.

(11) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(12) "Cost-plus-a-percentage-of-cost contract" means a contract where the contractor is paid a percentage over and above the contractor's actual expenses or costs.

(13) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(14) "Days" means calendar days, unless expressly provided otherwise.

(15) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule.

(16) "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

(17) "Director" means the director of the division.

(18) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(19) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except

to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(20) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(21) (a) "Grant" means furnishing, by a public entity or by any other public or private source, financial or other assistance to a person to support a program authorized by law.

(b) "Grant" does not include:

(i) an award whose primary purpose is to procure an end product or procurement item; or

(ii) a contract that is awarded as a result of a procurement or a procurement process.

(22) "Head of a procurement unit" means:

(a) as it relates to a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) as it relates to an executive branch procurement unit:

(i) the director of a division; or

(ii) any other person designated by the board, by rule;

(c) as it relates to a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) as it relates to a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) as it relates to a local district, the board of trustees of the local district or a designee of the board of trustees;

(f) as it relates to a special service district, the governing body of the special service district or a designee of the governing body;

(g) as it relates to a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) as it relates to a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) as it relates to a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) as it relates to a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) as it relates to a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) as it relates to an institution of higher education of the state, the president of

the institution of higher education, or the president's designee; or

(m) as it relates to a public transit district, the board of trustees or a designee of the board of trustees.

(23) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(24) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(25) "Invitation for bids" includes all documents, including documents that are attached or incorporated by reference, used for soliciting bids to provide a procurement item to a procurement unit.

(26) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates the terms and conditions of a contract.

(27) "Labor hour contract" is a contract where:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(28) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(29) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(30) "Municipality" means a city or a town.

(31) "Offeror" means a person who responds to a request for proposals.

(32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring a procurement item.

(b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a procurement item, including:

(i) the description of requirements;

(ii) the selection process;

(iii) solicitation of sources;

(iv) the preparation for soliciting a procurement item; and

(v) the award of a contract.

(34) "Procurement item" means a supply, a service, construction, or technology.

(35) "Procurement officer" means:

(a) as it relates to a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or  
(b) as it relates to the division or a procurement unit without independent procurement authority, the chief procurement officer.

(36) "Professional service" means a service that requires a high degree of specialized knowledge and discretion in the performance of the service, including:

- (a) legal services;
- (b) consultation services;
- (c) architectural services;
- (d) engineering;
- (e) design;
- (f) underwriting;
- (g) bond counsel;
- (h) financial advice;
- (i) construction management;
- (j) medical services;
- (k) psychiatric services; or
- (l) counseling services.

(37) "Protest officer" means:

(a) as it relates to the division or a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or
- (b) as it relates to a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

(38) "Request for information" means a nonbinding process where a procurement unit requests information relating to a procurement item.

(39) "Request for proposals" includes all documents, including documents that are attached or incorporated by reference, used for soliciting proposals to provide a procurement item to a procurement unit.

(40) "Request for statement of qualifications" means all documents used to solicit information about the qualifications of the person interested in responding to a potential procurement, including documents attached or incorporated by reference.

(41) "Requirements contract" means a contract:

(a) where a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

- (i) does not require a minimum purchase amount; or
- (ii) provides a maximum purchase limit.

(42) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and  
(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(43) "Responsive" means conforming in all material respects to the invitation for bids or request for proposals.

(44) "Sealed" means manually or electronically sealed and submitted bids or proposals.

(45) (a) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than a report that is incidental to the required performance.

(b) "Services" does not include an employment agreement or a collective bargaining agreement.

(46) "Sole source contract" means a contract resulting from a sole source procurement.

(47) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(2)(a) that there is only one source for the procurement item.

(48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into a procurement contract.

(49) "Specification" means any description of the physical or functional characteristics, or nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(50) "Standard procurement process" means one of the following methods of obtaining a procurement item:

(a) bidding, as described in Part 6, Bidding;

(b) request for proposals, as described in Part 7, Request for Proposals; or

(c) small purchases, in accordance with the requirements established under Section 63G-6a-408.

(51) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(52) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(53) (a) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(b) "Subcontractor" includes a trade contractor or specialty contractor.

(c) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(54) "Supplies" means all property, including equipment, materials, and printing.

(55) "Tie bid" means that the lowest responsive and responsible bids are identical in price.

(56) "Time and materials contract" means a contract where the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

- (b) the actual cost of materials and equipment usage; and
- (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

Amended by Chapter 196, 2014 General Session

**63G-6a-104. Definitions of government entities.**

As used in this chapter:

- (1) "Applicable rulemaking authority" means:
  - (a) as it relates to a legislative procurement unit, the Legislative Management Committee, which shall adopt a policy establishing requirements applicable to a legislative procurement unit;
  - (b) as it relates to a judicial procurement unit, the Judicial Council;
  - (c) as it relates to an executive branch procurement unit, except to the extent provided in Subsections (1)(d) through (g), the board;
  - (d) as it relates to the State Building Board, created in Section 63A-5-101, the State Building Board, but only to the extent that the rules relate to procurement authority expressly granted to the State Building Board by statute;
  - (e) as it relates to the Division of Facilities Construction and Management, created in Section 63A-5-201, the director of the Division of Facilities Construction and Management, but only to the extent that the rules relate to procurement authority expressly granted to the Division of Facilities Construction and Management by statute;
  - (f) as it relates to the Office of the Attorney General, the attorney general, but only to the extent that the rules relate to procurement authority expressly granted to the attorney general by statute;
  - (g) as it relates to the Department of Transportation, created in Section 72-1-201, the executive director of the Department of Transportation, but only to the extent that the rules relate to procurement authority expressly granted to the Department of Transportation by statute;
  - (h) as it relates to a local government procurement unit, the legislative body of the local government procurement unit, not as a delegation of authority from the Legislature, but under the local government procurement unit's own legislative authority;
  - (i) as it relates to a school district or a public school, the Utah State Procurement Policy Board, except to the extent that a school district makes its own nonadministrative rules, with respect to a particular subject, that do not conflict with the provisions of this chapter;
  - (j) as it relates to a state institution of higher education, the State Board of Regents;
  - (k) as it relates to a public transit district, the chief executive of the public transit district;
  - (l) as it relates to a local district or a special service district:
    - (i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or
    - (ii) on or after January 1, 2015, the board, except to the extent that the board of

trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

(m) as it relates to a procurement unit, other than a procurement unit described in Subsections (1)(a) through (l), the board.

(2) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(3) "Building board" means the State Building Board created in Section 63A-5-101.

(4) "Conservation district" is as defined in Section 17D-3-102.

(5) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(6) "Division" means the Division of Purchasing and General Services.

(7) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; or

(e) an institution of higher education of the state.

(8) "Executive branch procurement unit" means each department, division, office, bureau, agency, or other organization within the state executive branch, including the division and the attorney general's office.

(9) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) each office, committee, subcommittee, or other organization within the state judicial branch.

(10) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or

(e) each office, committee, subcommittee, or other organization within the state legislative branch.

(11) "Local building authority" is as defined in Section 17D-2-102.

(12) "Local district" is as defined in Section 17B-1-102.

(13) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;



(b) a county or municipality, and each office or agency of the county or municipality, that has adopted this entire chapter by ordinance; or

(c) a county or municipality, and each office or agency of the county or municipality, that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the adopted portion of this chapter.

(14) (a) "Procurement unit" means:

- (i) a legislative procurement unit;
- (ii) an executive branch procurement unit;
- (iii) a judicial procurement unit;
- (iv) an educational procurement unit;
- (v) a local government procurement unit;
- (vi) a local district;
- (vii) a special service district;
- (viii) a local building authority;
- (ix) a conservation district;
- (x) a public corporation; or
- (xi) a public transit district.

(b) "Procurement unit" does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(15) "Public corporation" is as defined in Section 63E-1-102.

(16) "Public entity" means any state government entity or a political subdivision of the state, including:

- (a) a procurement unit;
- (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and
- (c) any other government entity located in Utah that expends public funds.

(17) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(18) "Special service district" is as defined in Section 17D-1-102.

Amended by Chapter 63, 2014 General Session  
Amended by Chapter 196, 2014 General Session

### **63G-6a-105. Application of chapter.**

(1) The provisions of this chapter that are enacted on May 1, 2013, apply only to a procurement advertised, or begun on or after May 1, 2013, unless the parties agree to have the provisions apply with respect to a procurement that was advertised or begun before May 1, 2013, but is not completed before May 1, 2013.

(2) (a) Except as provided in Section 63G-6a-107, this chapter shall apply to every expenditure of public funds irrespective of the source of the funds, including federal assistance, by any procurement unit, under any contract.

(b) The provisions of this chapter do not apply to a public entity that is not a procurement unit.

(3) Except as provided in Subsection 17B-1-108(3) relating to local districts, the following procurement units shall adopt ordinances or resolutions relating to the

procurement of architect-engineer services not inconsistent with the provisions of Part 15, Architect-Engineer Services:

- (a) an educational procurement unit;
- (b) a conservation district;
- (c) a local building authority;
- (d) a local district;
- (e) a public corporation; or
- (f) a special service district.

(4) Any section of this chapter, or its implementing regulations, may be adopted by:

- (a) a county;
- (b) a municipality; or
- (c) the Utah Housing Corporation.

(5) Rules adopted under this chapter shall be consistent with the provisions of this chapter.

(6) An applicable rulemaking authority or a procurement unit may not adopt rules, policies, or regulations that are inconsistent with this chapter.

(7) Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Amended by Chapter 445, 2013 General Session

**63G-6a-106. Procurement units with specific statutory procurement authority -- Independent procurement authority.**

(1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation Code; and
- (e) Title 78A, Chapter 5, District Court.

(2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a procurement unit shall conduct a procurement in accordance with this chapter.

(3) (a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.

(b) The applicable rulemaking authority for a public transit district may make rules governing the procurement of a transit construction project or a transit improvement project.

(c) This Subsection (3) supersedes Subsections (1) and (2).

(4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:

- (i) engage in a standard procurement process;

- (ii) procure an item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or
- (iii) otherwise engage in an act authorized or required by this chapter.
- (b) The procurement units to which Subsection (4)(a) applies are:
  - (i) a legislative procurement unit;
  - (ii) a judicial procurement unit;
  - (iii) an educational procurement unit;
  - (iv) a local government procurement unit;
  - (v) a conservation district;
  - (vi) a local building authority;
  - (vii) a local district;
  - (viii) a public corporation;
  - (ix) a special service district;
  - (x) a public transit district; and
  - (xi) a procurement unit referred to in Subsection (1), to the extent authorized in Subsection (1).
- (c) A procurement unit with independent procurement authority shall comply with the requirements of this chapter.
- (d) Notwithstanding Subsection (4)(a), a procurement unit with independent procurement authority may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.
- (5) (a) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
  - (i) retain outside counsel; or
  - (ii) procure litigation support services, including retaining an expert witness.
- (b) A procurement unit with independent procurement authority that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
  - (i) retain outside counsel; or
  - (ii) procure litigation support services, including retaining an expert witness.
- (6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.
- (7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:
  - (a) deposit and investment services; and
  - (b) services related to issuing bonds.

Amended by Chapter 196, 2014 General Session

**63G-6a-107. Exemptions from chapter -- Compliance with federal law.**

- (1) Except for Part 24, Unlawful Conduct and Penalties, the provisions of this chapter do not apply to:
  - (a) funds administered under the Percent-for-Art Program of the Utah

Percent-for-Art Act;

(b) grants awarded by the state or contracts between the state and any of the following:

- (i) an educational procurement unit;
- (ii) a conservation district;
- (iii) a local building authority;
- (iv) a local district;
- (v) a public corporation;
- (vi) a special service district;
- (vii) a public transit district; or
- (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting under legislation that authorizes intergovernmental cooperation;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned by the state or a political subdivision of the state, if:

- (i) the consortium uses a competitive procurement process; and
- (ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

(d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services Administration or the National Fire Cache system;

(e) goods purchased for resale to the public; or

(f) the Division of Parks and Recreation, during a fiscal emergency, as defined by Subsection 79-4-1102(1), if the division is acting under the authority described in Sections 79-4-1101 through 79-4-1103.

(2) This chapter does not prevent a procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(3) This chapter does not apply to any action taken by a majority of both houses of the Legislature.

(4) Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

(5) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

Amended by Chapter 180, 2014 General Session

Amended by Chapter 196, 2014 General Session

Amended by Chapter 313, 2014 General Session

### **63G-6a-108. Limitations on and responsibility of executive branch**

**procurement units.**

(1) An executive branch procurement unit may not engage in a procurement unless:

- (a) the procurement is made under the direction and control of the division; or
- (b) the procurement is made under Section 63G-6a-106.

(2) An executive branch procurement unit that conducts any part of a procurement under this chapter is responsible to conduct that part of the procurement in compliance with this chapter.

Amended by Chapter 196, 2014 General Session

**63G-6a-109. Issuing procurement unit and conducting procurement unit.**

(1) With respect to a procurement by an executive branch procurement unit:

- (a) the division is the issuing procurement unit; and
- (b) the executive branch procurement unit is the conducting procurement unit

and is responsible to ensure that the procurement is conducted in compliance with this chapter.

(2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.

Enacted by Chapter 196, 2014 General Session

**63G-6a-201. Title.**

This part is known as "Utah State Procurement Policy Board."

Amended by Chapter 445, 2013 General Session

**63G-6a-202. Creation of Utah State Procurement Policy Board.**

(1) There is created the Utah State Procurement Policy Board.

(2) The board consists of up to 15 members as follows:

(a) two representatives of state institutions of higher education, appointed by the board of regents;

(b) a representative of the Department of Human Services, appointed by the executive director of that department;

(c) a representative of the Department of Transportation, appointed by the executive director of that department;

(d) two representatives of school districts, appointed by the State Office of Education;

(e) a representative of the Division of Facilities Construction and Management, appointed by the director of that division;

(f) one representative of a county, appointed by the Utah Association of Counties;

(g) one representative of a city or town, appointed by the Utah League of Cities and Towns;

(h) two representatives of local districts or special service districts, appointed by the Utah Association of Special Districts;

(i) the executive director of the Department of Technology Services or the executive director's designee;

(j) the chief procurement officer or the chief procurement officer's designee; and

(k) two representatives of state agencies, other than a state agency already represented on the board, appointed by the executive director of the Department of Administrative Services, with the approval of the executive director of the state agency that employs the employee.

(3) Members of the board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.

(4) A board member may serve as long as the member meets the description in Subsection (2) unless removed by the person or entity with the authority to appoint the board member.

(5) (a) The board shall:

(i) adopt rules of procedure for conducting its business; and

(ii) elect a chair to serve for one year.

(b) The chair of the board shall be selected by a majority of the members of the board and may be elected to succeeding terms.

(c) The chief procurement officer shall designate an employee of the division to serve as the nonvoting secretary to the policy board.

(6) A member of the board may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 91, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

### **63G-6a-203. Powers and duties of board.**

(1) In addition to making rules in accordance with Section 63G-6a-402 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a procurement unit with an applicable rulemaking authority other than the board, review the procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and

(iii) approve the use of innovative procurement processes.

(b) Except as provided in Section 63G-6a-1702, the board may not exercise authority over:

- (i) the award or administration of any particular contract; or
- (ii) any dispute, claim, or litigation pertaining to any particular contract.

(3) Except as otherwise expressly provided in this chapter, the board does not have authority over a matter involving a procurement unit with independent procurement authority.

Amended by Chapter 278, 2013 General Session

Amended by Chapter 445, 2013 General Session

**63G-6a-204. Applicability of rules and regulations of Utah State Procurement Policy Board and State Building Board -- Report to interim committee.**

(1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all procurement units for which the board is the applicable rulemaking authority.

(2) The building board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(3) An applicable rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the applicable rulemaking authority has rulemaking authority.

(4) The board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under Section 63G-6a-203.

(5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority is required to initiate rulemaking proceedings, for rules required to be made under this chapter, on or before:

- (a) May 13, 2014, if the applicable rulemaking authority is the board; or
- (b) January 1, 2015, for each other applicable rulemaking authority.

Amended by Chapter 196, 2014 General Session

**63G-6a-205. Procurement advisory councils.**

The chief procurement officer may appoint advisory councils to provide advice regarding any matters within the authority of the chief procurement officer.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-301. Title.**

This part is known as "Chief Procurement Officer."

Enacted by Chapter 347, 2012 General Session

**63G-6a-302. Chief procurement officer -- Appointment -- Qualifications -- Authority.**

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering recommendations from the board.

(2) The chief procurement officer shall:

(a) have a minimum of eight years' experience in the large-scale procurement of supplies and services or services and construction, at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and

(b) be a person with demonstrated executive and organizational ability.

(3) The chief procurement officer appointed under Subsection (1) is also the director of the Division of Purchasing and General Services.

(4) The chief procurement officer has authority over a procurement by a procurement unit, except:

(a) a procurement unit with independent procurement authority; or

(b) as otherwise expressly provided in this chapter.

Amended by Chapter 445, 2013 General Session

**63G-6a-303. Duties and authority of chief procurement officer.**

(1) Except as otherwise specifically provided in this chapter, the chief procurement officer serves as the central procurement officer of the state and shall:

(a) adopt office policies governing the internal functions of the division;

(b) procure or supervise each procurement over which the chief procurement officer has authority;

(c) establish and maintain programs for the inspection, testing, and acceptance of each procurement item over which the chief procurement officer has authority;

(d) prepare statistical data concerning each procurement and procurement usage of a state procurement unit;

(e) ensure that:

(i) before approving a procurement not covered by an existing statewide contract for information technology or telecommunications supplies or services, the chief information officer and the agency have stated in writing to the division that the needs analysis required in Section 63F-1-205 was completed, unless the procurement is approved in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

(ii) the oversight authority required by Subsection (5)(a) is not delegated outside the division;

(f) provide training to procurement units and to persons who do business with procurement units;

(g) if the chief procurement officer determines that a procurement over which the chief procurement officer has authority is out of compliance with this chapter or



board rules:

- (i) correct or amend the procurement to bring it into compliance; or
- (ii) cancel the procurement, if:
  - (A) it is not feasible to bring the procurement into compliance; or
  - (B) the chief procurement officer determines that it is in the best interest of the state to cancel the procurement; and
- (h) if the chief procurement officer determines that a contract over which the chief procurement officer has authority is out of compliance with this chapter or board rules, correct or amend the contract to bring it into compliance or cancel the contract:
  - (i) if the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and
  - (ii) after consultation with the attorney general's office.
- (2) The chief procurement officer may:
  - (a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any stage of the procurement process; and
  - (b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time during the term of the contract.

Amended by Chapter 196, 2014 General Session

**63G-6a-304. Delegation of authority.**

- (1) In accordance with rules made by the board, the chief procurement officer may delegate authority to designees or to any department, agency, or official.
- (2) For a procurement under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, any delegation by the chief procurement officer under this section shall be made to the Governor's Office of Economic Development.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-305. Duty of chief procurement officer in maintaining specifications.**

- (1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the use of specifications for each procurement over which the chief procurement officer has authority.
- (2) The chief procurement officer shall obtain expert advice and assistance from personnel of procurement units in the development of specifications and may delegate in writing to a procurement unit the authority to prepare and utilize its own specifications.
- (3) For a procurement under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, any delegation by the chief procurement officer under this section shall be made to the Governor's Office of Economic Development.

Amended by Chapter 445, 2013 General Session

**63G-6a-401. Title.**

This part is known as "General Procurement Provisions."

Enacted by Chapter 347, 2012 General Session

**63G-6a-402. Procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

(1) Except as otherwise provided in Section 63G-6a-107, Section 63G-6a-403, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may not obtain a procurement item, unless:

(a) if the procurement unit is the division or a procurement unit with independent procurement authority, the procurement unit:

(i) uses a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

(ii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority;

(b) if the procurement unit is a county, a municipality, or the Utah Housing Corporation, the procurement unit complies with:

(i) the requirements of this chapter that are adopted by the procurement unit; and

(ii) all other procurement requirements that the procurement unit is required to comply with; or

(c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or (b), the procurement unit:

(i) obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board;

(ii) uses a standard procurement process; and

(iii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority.

(2) Subject to Subsection (3), the applicable rulemaking authority shall make rules relating to the management and control of procurements and procurement procedures by a procurement unit.

(3) (a) Rules made under Subsection (2) shall ensure compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(b) The State Building Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make the rules described in this chapter in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) The State Building Board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made by the State Building Board under this chapter.

(6) The rules of the applicable rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

Amended by Chapter 179, 2014 General Session

Amended by Chapter 196, 2014 General Session

**63G-6a-403. Prequalification of potential vendors.**

(1) As used in this section:

(a) "Closed-ended prequalification process" means a process to prequalify potential vendors under this section that is characterized by:

(i) a short, specified period of time during which potential vendors may be prequalified; and

(ii) a specified date at which prequalifications expire.

(b) "Open-ended prequalification process" means a process to prequalify vendors and potential vendors under this section that is characterized by an indeterminate period of time during any part of which vendors or potential vendors may be prequalified and the prequalification of previously prequalified vendors or potential vendors may be periodically renewed.

(c) "Vendor" means:

(i) a bidder;

(ii) an offeror; or

(iii) a contractor, including an architect or an engineer.

(2) A procurement unit may, in accordance with this section:

(a) using a closed-ended prequalification process or an open-ended prequalification process:

(i) prequalify potential vendors to provide any procurement item or type of procurement item specified by the procurement unit; or

(ii) rank architects, engineers, or other professional service providers to begin the fee negotiation process, as provided in this chapter; and

(b) limit participation in a standard procurement process to the prequalified potential vendors for the specified procurement item or type of procurement item.

(3) To prequalify potential vendors or rank professional service providers, a

procurement unit shall issue a request for statement of qualifications.

(4) A procurement unit that issues a request for statement of qualifications:

(a) shall:

(i) publish the request for statement of qualifications in accordance with the requirements of Section 63G-6a-406; and

(ii) state in the request for statement of qualifications:

(A) the procurement item or type of procurement item to which the request for statement of qualifications relates;

(B) the scope of work to be performed;

(C) the instructions and deadline for submitting a statement of qualifications;

(D) the criteria by which the procurement unit will evaluate statements of qualifications;

(E) whether the prequalification process is a closed-ended prequalification process or an open-ended prequalification process;

(F) if the prequalification process is a closed-ended prequalification process, the period of time during which the list of prequalified potential vendors will remain in effect, which may not be longer than 18 months after the list of prequalified potential vendors is made available to the public under Subsection (11)(b);

(G) if the prequalification process is an open-ended prequalification process, when a potential vendor may submit a statement of qualifications for the potential vendor to be considered for inclusion on the list of prequalified potential vendors; and

(H) that a procurement unit may limit participation in an invitation for bids or a request for proposals to the potential vendors that are prequalified to provide the specified procurement item or type of procurement item; and

(b) may request the person submitting a statement of qualifications to provide:

(i) basic information about the person;

(ii) the person's experience and work history;

(iii) information about the person's management and staff;

(iv) information about the person's licenses, certifications, and other qualifications;

(v) any applicable performance ratings;

(vi) financial statements reporting the person's financial condition; and

(vii) any other pertinent information.

(5) (a) In order to renew a prequalification, a vendor or potential vendor that has been previously prequalified through an open-ended prequalification process shall submit a statement of qualifications no more than 18 months after the previous prequalification of that vendor or potential vendor.

(b) A previously prequalified vendor or potential vendor submitting a statement of qualifications under Subsection (5)(a) shall comply with all requirements applicable at that time to a potential vendor seeking prequalification for the first time.

(6) A procurement unit may at any time modify prequalification requirements of an open-ended prequalification process.

(7) The criteria described in Subsection (4)(a)(ii)(D):

(a) shall include the prequalification requirements unique to the procurement;

(b) may include performance rating criteria; and

(c) may not be so restrictive that the criteria unreasonably limit competition.

(8) A procurement unit may, before making a final list of prequalified vendors, request additional information to clarify responses made to the request for statement of qualifications.

(9) A potential vendor shall be included on the list of prequalified potential vendors if the potential vendor:

(a) submits a timely, responsive response to the request for statement of qualifications; and

(b) meets the criteria for qualification described in Subsection (4)(a)(ii)(D).

(10) If a request for statement of qualifications will result in only one potential vendor being placed on the list of prequalified potential vendors:

(a) the procurement unit shall cancel the request for statement of qualifications; and

(b) the list may not be used by the procurement unit.

(11) The procurement unit shall:

(a) before making the list of prequalified potential vendors available to the public, provide each potential vendor who provided information in response to the request, but who did not meet the minimum qualifications for placement on the list, a written justification statement describing why the potential vendor did not meet the criteria for inclusion on the list; and

(b) make the list of prequalified potential vendors available to the public within 30 days after:

(i) completing the evaluation process, if the prequalification process is a closed-ended prequalification process; or

(ii) updating the list of prequalified potential vendors, if the prequalification process is an open-ended prequalification process.

Amended by Chapter 196, 2014 General Session

**63G-6a-404. Approved vendor list.**

(1) (a) As used in this section, "vendor" has the same meaning as defined in Section 63G-6a-403.

(b) The process described in this section may not be used for construction projects that cost more than an amount specified by the applicable rulemaking authority.

(c) The division or a procurement unit with independent procurement authority may compile a list of approved vendors from which procurement items may be obtained.

(2) An approved vendor list may only be compiled from timely, responsive responses received under Section 63G-6a-403 or the process described in Part 15, Architect-Engineer Services.

(3) In order to ensure equal treatment of vendors on an approved vendor list, for services other than the services described in Subsection (4) or (5) the procurement unit shall use one of the following methods in an unbiased manner:

(a) a rotation system, organized alphabetically, numerically, or randomly;

- (b) assigning vendors to a specified geographical area; or
- (c) classifying each vendor based on each vendor's particular expertise, qualifications, or field.

(4) (a) For a construction project that costs less than the amount established by the applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a potential construction contractor from an approved potential contractor list, using an invitation for bids or a request for proposals.

(b) For architectural or engineering services for a construction project described in Subsection (4)(a), a procurement unit shall select a potential contractor from an approved potential contractor list:

- (i) using a rotation system, organized alphabetically, numerically, or randomly;
- (ii) assigning a potential contractor to a specified geographical area; or
- (iii) classifying each potential contractor based on the potential contractor's field or area of expertise.

(5) A procurement unit may not use an approved vendor list described in this section for a construction project with a cost that is equal to or greater than the amount established by the applicable rulemaking authority under Subsection (1)(b).

(6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement unit shall enter into fee negotiations with the potential contractor.

(b) If, after good faith negotiations, the procurement unit and the potential contractor are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select another contractor under Subsection (4)(b) and enter into fee negotiations with that potential contractor.

Amended by Chapter 196, 2014 General Session

**63G-6a-406. Public notice of certain solicitations.**

(1) The division or a procurement unit with independent procurement authority that issues a solicitation required to be published in accordance with this section, shall provide public notice that includes:

- (a) the name of the conducting procurement unit;
- (b) the name of the procurement unit acquiring the procurement item;
- (c) information on how to contact the issuing procurement unit;
- (d) the date of the opening and closing of the solicitation;
- (e) information on how to obtain a copy of the procurement documents;
- (f) a general description of the procurement items that will be obtained through the standard procurement process or sole source procurement; and
- (g) for a notice of a sole source procurement:
  - (i) contact information and other information relating to contesting or obtaining additional information relating to the sole source procurement; and
  - (ii) the earliest date that the procurement unit may make the sole source procurement.

(2) Except as provided in Subsection (4), the issuing procurement unit shall publish the notice described in Subsection (1):

- (a) at least seven days before the day of the deadline for submission of a bid or

other response; and

- (b) (i) in a newspaper of general circulation in the state;
- (ii) in a newspaper of local circulation in the area:
  - (A) directly impacted by the procurement; or
  - (B) over which the procurement unit has jurisdiction;
- (iii) on the main website for the issuing procurement unit or the procurement unit acquiring the procurement item; or
- (iv) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.

(3) Except as provided in Subsection (4), for a sole source procurement for which notice is required to be published in accordance with this section, the issuing procurement unit shall publish the notice described in Subsection (1):

(a) at least seven days before the acquisition of the sole source procurement item; and

- (b) (i) in a newspaper of general circulation in the state;
- (ii) in a newspaper of local circulation in the area:
  - (A) directly impacted by the procurement; or
  - (B) over which the procurement unit has jurisdiction;
- (iii) on the main website for the procurement unit acquiring the procurement item; or
- (iv) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.

(4) An issuing procurement unit may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:

- (a) states that a shorter time is needed; and
- (b) determines that competition from multiple sources may be obtained within the shorter period of time.

(5) (a) An issuing procurement unit shall make a copy of the solicitation documents available for public inspection at the main office of the issuing procurement unit or on the website described in Subsection (2)(b) until the award of the contract or the cancellation of the procurement.

(b) A procurement unit issuing a sole source procurement shall make a copy of information related to the sole source procurement available for public inspection at the main office of the procurement unit or on the website described in Subsection (3)(b) until the award of the contract or the cancellation of the procurement.

(c) A procurement unit shall maintain all records in accordance with Part 20, Records.

Amended by Chapter 196, 2014 General Session

**63G-6a-407. Purpose of specifications.**

(1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the procurement unit, and may not be unduly restrictive.

(2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Amended by Chapter 445, 2013 General Session

**63G-6a-408. Small purchases.**

(1) As used in this section:

(a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2)(a)(i), that a procurement unit may expend to obtain procurement items from the same source under this section.

(b) "Individual procurement threshold" means the maximum amount, established by the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit may purchase a procurement item under this section.

(c) "Single procurement aggregate threshold" means the maximum total amount, established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2) The applicable rulemaking authority may make rules governing small purchases, including:

(a) establishing expenditure thresholds, including:

(i) an annual cumulative threshold;

(ii) an individual procurement threshold; and

(iii) a single procurement aggregate threshold;

(b) establishing procurement requirements relating to the thresholds described in Subsection (2)(a); and

(c) the use of electronic, telephone, or written quotes.

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

(5) Subsection (4) does not apply if:

(a) the procurement item is obtained for an unanticipated, urgent or unanticipated, emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition; or

(b) the chief procurement officer or the head of a procurement unit that is an



executive branch procurement unit with independent procurement authority:

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and

(E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;

(ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

(iii) grants an exception, in writing, to the requirement described in Subsection (4).

(6) Except as otherwise expressly provided in this section, a procurement unit:

(a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and

(b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

(7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.

(8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:

(i) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or

(ii) meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.

(b) A person who engages in the conduct made unlawful under Subsection (8)(a) is guilty of:

(i) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;

(ii) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;

(iii) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or

(iv) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

(9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):

(a) making two or more separate purchases;

(b) dividing an invoice or purchase order into two or more invoices or purchase orders; or

(c) making smaller purchases over a period of time.

(10) A person who violates Subsection (8) is subject to the criminal penalties described in Section 63G-6a-2405.

(11) The Division of Finance within the Department of Administrative Services may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.

(12) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Amended by Chapter 196, 2014 General Session

**63G-6a-501. Title.**

This part is known as "Request for Information."

Enacted by Chapter 347, 2012 General Session

**63G-6a-502. Purpose of request for information.**

(1) The purpose of a request for information is to:

(a) obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;

(b) determine whether to issue an invitation for bids or a request for proposals; and

(c) generate interest in a potential invitation for bids or a request for proposals.

(2) A request for information may be useful in order to:

(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or complex procurement;

(b) determine the market availability of a procurement item; or

(c) determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

Enacted by Chapter 347, 2012 General Session

**63G-6a-503. Request for information and response nonbinding.**

(1) A request for information is not a procurement process and may not be used to make a purchase or enter into a contract. A procurement unit is required to use a standard procurement process, or comply with an exception to the requirement to use a standard procurement process described in Part 8, Exceptions to Procurement Requirements, in order to make a purchase or enter into a contract.

(2) A response to a request for information is not an offer and may not be accepted to form a binding contract.

Amended by Chapter 445, 2013 General Session

**63G-6a-504. Contents of request for information.**

A request for information may seek a wide range of information, including:

- (1) availability of a procurement item;
- (2) delivery schedules;
- (3) industry standards and practices;
- (4) product specifications;
- (5) training;
- (6) new technologies;
- (7) capabilities of potential providers of a procurement item; and
- (8) alternate solutions.

Enacted by Chapter 347, 2012 General Session

**63G-6a-505. Protected information.**

Information submitted to or by a governmental entity in response to a request for information is protected under Section 63G-2-305.

Enacted by Chapter 445, 2013 General Session

**63G-6a-601. Title.**

This part is known as "Bidding."

Enacted by Chapter 347, 2012 General Session

**63G-6a-602. Contracts awarded by bidding.**

(1) Except as otherwise provided in this chapter, the division or a procurement unit with independent procurement authority shall award a contract for a procurement by bidding, in accordance with the rules of the applicable rulemaking authority.

(2) The bidding standard procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

Amended by Chapter 445, 2013 General Session

**63G-6a-603. Invitation for bids -- Requirements -- Publication.**

- (1) The bidding standard procurement process begins when the issuing procurement unit issues an invitation for bids.
- (2) An invitation for bids shall:
  - (a) state the period of time during which bids will be accepted;
  - (b) describe the manner in which a bid shall be submitted;
  - (c) state the place where a bid shall be submitted; and
  - (d) include, or incorporate by reference:
    - (i) a description of the procurement items sought;
    - (ii) the objective criteria that will be used to evaluate the bids; and
    - (iii) the required contractual terms and conditions.
- (3) An issuing procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-406.

Amended by Chapter 196, 2014 General Session

**63G-6a-604. Bid opening and acceptance.**

- (1) Bids shall be opened:
  - (a) publicly, except as provided in Section 63G-6a-611;
  - (b) in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically; and
  - (c) at the time and place indicated in the invitation for bids.
- (2) Bids shall be accepted unconditionally, without alteration or correction, except as otherwise authorized by this chapter.
- (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.
  - (b) A bid that is not responsive includes a bid that:
    - (i) is conditional;
    - (ii) attempts to modify the bid requirements;
    - (iii) contains additional terms or conditions; or
    - (iv) fails to conform with the requirements or specifications of the invitation for bids.
  - (c) A bid that is not responsible includes a bid where the procurement officer reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements.
- (4) An issuing procurement unit may not accept a bid after the time for submission of a bid has expired.
- (5) The procurement officer shall:
  - (a) record the name of each bidder and the amount of each bid; and
  - (b) after the bid is awarded, make the information described in Subsection (5)(a) available for public disclosure.

Amended by Chapter 445, 2013 General Session

**63G-6a-605. Correction or withdrawal of bids -- Cancellation of award.**

(1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an award or a contract that is based on an unintentionally erroneous bid, may be made in accordance with the rules of the applicable rulemaking authority.

(2) Notwithstanding Subsection (1), the following changes may not be made to a bid after the bid opening:

- (a) changes in bid pricing;
- (b) changes in the cost evaluation formula; or
- (c) changes in other provisions that are prejudicial to fair competition or to the interest of the procurement unit.

(3) A decision to permit the correction or withdrawal of a bid or the cancellation of an award or a contract under Subsection (1) shall be supported in a written document, signed by the chief procurement officer, the procurement officer, or the head of the procurement unit with independent procurement authority.

Amended by Chapter 445, 2013 General Session

**63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

(1) A procurement unit that conducts a procurement using a bidding standard procurement process shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time and manner of delivery;
- (h) references;
- (i) financial stability;
- (j) cost;
- (k) suitability for a particular purpose; or
- (l) other objective criteria specified in the invitation for bids.

(2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

(3) The conducting procurement unit shall:

- (a) award the contract as soon as practicable to:
  - (i) the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
  - (ii) if, in accordance with Subsection (4), the procurement officer or the head of the conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
- (b) cancel the invitation for bids without awarding a contract.

(4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may disqualify a bidder for:

- (a) a violation of this chapter;
  - (b) a violation of a requirement of the invitation for bids;
  - (c) unlawful or unethical conduct; or
  - (d) a change in circumstance that, had the change been known at the time the bid was submitted, would have caused the bidder to not be the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.
- (5) A procurement officer or head of a conducting procurement unit who disqualifies a bidder under Subsection (4) shall:
- (a) make a written finding, stating the reasons for disqualification; and
  - (b) provide a copy of the written finding to the disqualified bidder.
- (6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

Amended by Chapter 196, 2014 General Session

**63G-6a-607. Action if all bids exceed available funds -- Exemption.**

- (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting procurement unit certifies that all accepted bids exceed available funds and that the lowest responsive and responsible bidder does not exceed the available funds by more than 5%, the procurement officer may negotiate an adjustment of the bid price and bid requirements with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.
- (2) A procurement officer may not adjust the bid requirements under Subsection (1) if there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive, responsible, and competitive bid.
- (3) The Division of Facilities Construction and Management is exempt from the requirements of this section if:
- (a) the building board adopts rules governing procedures when all accepted bids exceed available funds; and
  - (b) the Division of Facilities Construction and Management complies with the rules described in Subsection (3)(a).

Amended by Chapter 196, 2014 General Session

**63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

- (1) A procurement officer shall resolve a tie bid in accordance with a method established by rule made by the applicable rulemaking authority. The method may include awarding the tie bid:
- (a) to the tie bidder who:
    - (i) is a provider of state products, if no other tie bidder is a responsive provider of state products;
    - (ii) is closest to the point of delivery;
    - (iii) received the previous award; or

- (iv) will provide the earliest delivery date;
- (b) by drawing lots; or
- (c) by any other reasonable method of resolving a tie bid.

(2) The method chosen by the procurement officer to resolve a tie bid shall be at the sole discretion of the procurement officer, subject to the rules established under Subsection (1).

(3) A procurement unit in the state executive branch shall provide a copy of the procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000 in expenditures.

Amended by Chapter 445, 2013 General Session

**63G-6a-609. Multiple stage bidding process.**

(1) A procurement unit that conducts a procurement using a bidding standard procurement process may use multiple stages to:

- (a) narrow the number of bidders who will progress to a subsequent stage;
- (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;

- (c) enter into a contract for a single procurement; or
- (d) award multiple contracts for a series of upcoming procurements.

(2) The invitation for bids for a multiple stage bidding process shall:

- (a) describe the requirements for, and purpose of, each stage of the process;
- (b) indicate whether the procurement unit intends to award:
  - (i) a single contract; or
  - (ii) multiple contracts for a series of upcoming procurements; and
- (c) state that:
  - (i) the first stage is for prequalification only;
  - (ii) a bidder may not submit any pricing information in the first stage of the process; and
  - (iii) bids in the second stage will only be accepted from a person who prequalifies in the first stage.

(3) During the first stage, the conducting procurement unit:

- (a) shall prequalify bidders to participate in subsequent stages, in accordance with Section 63G-6a-403;
- (b) shall prohibit the submission of pricing information until the final stage; and
- (c) may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.

(4) Contracts may only be awarded for a procurement item described in stage one of the invitation for bids.

(5) The conducting procurement unit may use as many stages as it determines to be appropriate.

(6) Except as otherwise expressly provided in this section, a procurement unit conducting a multiple stage bidding process under this section shall ensure compliance with this part.

(7) The applicable rulemaking authority may make rules governing the use of a

multiple stage process described in this section.

Amended by Chapter 196, 2014 General Session

**63G-6a-610. Contracts awarded by reverse auction.**

(1) Reverse auction bidding may be used if the procurement officer determines, in writing, that reverse auction bidding will provide the best value to the procurement unit.

(2) Reverse auction bidding is appropriate to use when there are multiple prequalified providers of a procurement item.

Amended by Chapter 445, 2013 General Session

**63G-6a-611. Invitation for bids for reverse auction -- Requirements -- Publication of invitation.**

(1) The reverse auction bidding process begins when the issuing procurement unit issues an invitation for bids to prequalify bidders to participate in the reverse auction.

(2) The invitation for bids shall:

(a) state the period of time during which bids will be accepted;

(b) state that the bid will be conducted by reverse auction;

(c) describe the procurement items sought;

(d) describe the minimum requirements to become prequalified;

(e) state the required contractual terms and conditions; and

(f) describe the procedure that the conducting procurement unit will follow in the reverse auction.

(3) In order to participate in a reverse auction, a bidder shall agree to:

(a) the specifications, and contractual terms and conditions, of the procurement; and

(b) be trained in, and abide by, the procedure that the division or the procurement unit with independent procurement authority will follow in conducting the reverse auction.

(4) The division or a procurement unit with independent procurement authority shall publish an invitation for bids for a reverse auction in accordance with the requirements of Section 63G-6a-406.

Amended by Chapter 196, 2014 General Session

**63G-6a-612. Conduct of reverse auction.**

(1) A procurement unit conducting a reverse auction:

(a) may conduct the reverse auction at a physical location or by electronic means;

(b) shall permit all prequalified bidders to participate in the reverse auction;

(c) may not permit a bidder to participate in the reverse auction if the bidder did not prequalify to participate in the reverse auction;



- (d) may not accept a bid after the time for submission of a bid has expired;
- (e) shall update the bids on a real time basis; and
- (f) shall conduct the reverse auction in a manner that permits each bidder to:
  - (i) bid against each other; and
  - (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
- (2) At the end of the reverse auction, the conducting procurement unit shall:
  - (a) award the contract as soon as practicable to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
  - (b) cancel the reverse auction without awarding a contract.
- (3) After the reverse auction is finished, the conducting procurement unit shall make publicly available:
  - (a) (i) the amount of the final bid submitted by each bidder during the reverse auction; and
  - (ii) the identity of the bidder that submitted each final bid; and
  - (b) if practicable:
    - (i) the amount of each bid submitted during the reverse auction; and
    - (ii) the identity of the bidder that submitted each bid.

Amended by Chapter 196, 2014 General Session

**63G-6a-701. Title.**

This part is known as "Request for Proposals."

Enacted by Chapter 347, 2012 General Session

**63G-6a-702. Contracts awarded by request for proposals.**

- (1) A request for proposals standard procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals standard procurement process will provide the best value to the procurement unit.
- (2) The request for proposals standard procurement process is appropriate to use for:
  - (a) the procurement of professional services;
  - (b) a design-build procurement;
  - (c) when cost is not the most important factor to be considered in making the selection that is most advantageous to the procurement unit; or
  - (d) when factors, in addition to cost, are highly significant in making the selection that is most advantageous to the procurement unit.
- (3) The procurement of architect-engineer services is governed by Part 15, Architect-Engineer Services.

Amended by Chapter 196, 2014 General Session

**63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

(1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.

(2) A request for proposals shall:

(a) state the period of time during which a proposal will be accepted;

(b) describe the manner in which a proposal shall be submitted;

(c) state the place where a proposal shall be submitted;

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

(ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and

(iii) the standard contractual terms and conditions required by the authorized purchasing entity;

(e) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;

(f) state the formula that will be used to determine the score awarded for the cost of each proposal;

(g) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and

(h) state that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers, but that proposals may be accepted without discussions.

(3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-406.

Amended by Chapter 196, 2014 General Session

**63G-6a-704. Opening of proposals -- Limitation on accepting a proposal -- Rejecting a proposal.**

(1) An issuing procurement unit shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process.

(2) An issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired.

(3) At any time during the request for proposals standard procurement process, a conducting procurement unit may reject a proposal if the conducting procurement unit determines that:

(a) the person submitting the proposal is not responsible; or

(b) the proposal is not responsive or does not meet mandatory minimum requirements stated in the request for proposals.

Amended by Chapter 196, 2014 General Session

**63G-6a-706. Correction or withdrawal of proposal -- Cancellation of award.**

(1) Correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal, may be made in accordance with the rules of the applicable rulemaking authority.

(2) A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract under Subsection (1) shall be supported in a written document, signed by the procurement officer.

Enacted by Chapter 347, 2012 General Session

**63G-6a-707. Evaluation of proposals -- Evaluation committee.**

(1) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;
- (g) time, manner, or schedule of delivery;
- (h) references;
- (i) financial solvency;
- (j) suitability for a particular purpose;
- (k) management plans;
- (l) cost; or
- (m) other subjective or objective criteria specified in the request for proposals.

(2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

(3) The conducting procurement unit shall:

- (a) appoint an evaluation committee consisting of at least three individuals; and
- (b) ensure that the evaluation committee and each member of the evaluation

committee:

- (i) does not have a conflict of interest with any of the offerors;
- (ii) can fairly evaluate each proposal;
- (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
- (iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) The evaluation committee may, with the approval of the head of the

conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors.

(5) (a) Except as provided in Subsections (5)(b) and (8), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(b) The issuing procurement unit shall:

(i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;

(ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;

(iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and

(iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.

(c) The evaluation committee may not:

(i) change its final recommended scores described in Subsection (5)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

(ii) change cost scores calculated by the issuing procurement unit.

(6) (a) As used in this Subsection (6), "management fee" includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Subsection (7), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(7) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103,

the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(8) An issuing procurement unit is not required to comply with Subsection (5) if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

(i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (5); and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (5); and

(b) makes the written statement available to the public, upon request.

Amended by Chapter 196, 2014 General Session

**63G-6a-707.5. Best and final offers.**

(1) At any time during the evaluation process, the evaluation committee, with the approval of the director or head of the issuing procurement unit, may:

(a) request best and final offers from responsible and responsive offerors; and  
(b) evaluate those offers.

(2) In requesting and evaluating best and final offers under Subsection (1), the evaluation committee shall:

(a) ensure that each offeror receives fair and equal treatment with respect to the other offerors;

(b) establish a schedule and procedures for conducting discussions;

(c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;

(d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and

(e) set a common date and time for the submission of best and final offers.

(3) If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the offeror before the conduct of discussions shall be treated as the offeror's best and final offer.

Renumbered and Amended by Chapter 196, 2014 General Session

**63G-6a-708. Justification statement -- Cost-benefit analysis.**

(1) (a) In determining which proposal provides the best value to the procurement unit, the evaluation committee and the conducting procurement unit shall prepare a written justification statement that:

(i) explains the score assigned to each evaluation category;

(ii) explains how the proposal with the highest total combined score provides the best value to the procurement unit in comparison to the other proposals;

(iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and

(iv) if applicable, includes the written determination described in Subsection (5).

(b) An explanation under Subsection (1)(a)(i) need not address each criterion within each category.

(2) If, in determining the best value to the procurement unit, the evaluation committee awards the highest score, including the score for cost, to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:

(a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and

(b) except as provided in Subsection (5):

(i) includes the estimated added financial value to the procurement unit of each criterion that justifies awarding the contract to the higher cost offeror; and

(ii) demonstrates that the value of the advantage to the procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals.

(3) If the informal cost-benefit analysis described in Subsection (2) does not justify awarding the contract to the offeror that received the highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the highest score; and

(b) may award the contract to the offeror that received the next highest score, unless:

(i) an informal cost-benefit analysis is required, because the difference between the cost proposed by the offeror that received the next highest score and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

(ii) the informal cost-benefit analysis does not justify award of the contract to the offeror that received the next highest score.

(4) If the informal cost-benefit analysis described in Subsection (2) does not justify award of the contract to the offeror, described in Subsection (3), that received the next highest score, the issuing procurement unit:

(a) may not award the contract to the offeror that received the next highest score; and

(b) shall continue with the process described in Subsection (3) for each offeror that received the next highest score, until the issuing procurement unit:

(i) awards the contract in accordance with the provisions of this section; or

(ii) cancels the request for proposals.

(5) (a) The evaluation committee, with the issuing procurement unit's approval, may waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee determines in writing that assigning a financial value to a particular procurement item or evaluation criterion is not practicable.

(b) A written determination under Subsection (5)(a):

(i) shall explain:

(A) why it is not practicable to assign a financial value to the procurement item

or evaluation criterion; and

(B) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the procurement unit; and

(ii) may be included as part of the justification statement.

(6) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection 63G-6a-707(6).

(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (6)(a) to ensure that:

(i) a competitive process is maintained; and

(ii) the contract awarded is in the best interest of the procurement unit.

Amended by Chapter 196, 2014 General Session

**63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

(1) After the completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the head of the procurement unit or designee for review and final determination of a contract award.

(2) After reviewing the proposals, evaluation scores, and justification statement, including any required cost-benefit analysis, the head of the issuing procurement unit or designee shall:

(a) award the contract as soon as practicable to:

(i) the responsive and responsible offeror with the highest total score; or

(ii) if, in accordance with Subsection (3), the procurement officer or the head of the issuing procurement unit disqualifies the offeror described in Subsection (2)(a)(i), the responsive and responsible offeror with the next highest total score; or

(b) cancel the request for proposals without awarding a contract.

(3) In accordance with Subsection (4), the procurement officer or the head of the issuing procurement unit may disqualify an offeror for:

(a) a violation of this chapter;

(b) not being responsive or responsible;

(c) a violation of a requirement of the request for proposals;

(d) unlawful or unethical conduct; or

(e) a change in circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score.

(4) A procurement officer or head of an issuing procurement unit who disqualifies an offeror under Subsection (3) shall:

(a) make a written finding, stating the reasons for disqualification; and

(b) provide a copy of the written finding to the disqualified offeror.

(5) If an issuing procurement unit cancels a request for proposals without awarding a contract, the issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Amended by Chapter 196, 2014 General Session

**63G-6a-709.5. Publication of award and scores.**

(1) The issuing procurement unit shall, on the next business day after the award of a contract is announced, make available to each offeror and to the public a written statement that includes:

(a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;

(b) the justification statement under Section 63G-6a-708, including any required cost-benefit analysis; and

(c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.

(2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes or another method in a statement under Subsection (1) to distinguish offerors to which the contract is not awarded and to indicate their scores, as long as an offeror cannot be matched with the score awarded to that offeror.

Amended by Chapter 196, 2014 General Session

**63G-6a-710. Multiple stage process.**

(1) The division or a procurement unit with independent procurement authority may conduct a request for proposals in stages, where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages.

(2) Except as otherwise expressly provided in this section, the division or a procurement unit with independent procurement authority shall conduct a multiple stage process in accordance with this part.

Amended by Chapter 445, 2013 General Session

**63G-6a-711. Procurement for submitted proposal.**

(1) As used in this section:

(a) "Committee" is as defined in Section 63M-1-2602.

(b) "Initial proposal" is a proposal submitted by a private entity under Section 63M-1-2605.

(2) After receipt by the chief procurement officer of a copy of an initial proposal from the committee in accordance with Subsection 63M-1-2606(5), including any comment, suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a standard procurement process in compliance with this chapter.

(3) The chief procurement officer or designee shall:

(a) review each detailed proposal received in accordance with Title 63M,



Chapter 1, Part 26, Government Procurement Private Proposal Program; and

(b) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

(4) For purposes of this chapter, the Governor's Office of Economic Development is considered a procurement unit with independent procurement authority for a procurement under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program.

Amended by Chapter 445, 2013 General Session

**63G-6a-801. Title.**

This part is known as "Exceptions to Procurement Requirements."

Enacted by Chapter 347, 2012 General Session

**63G-6a-802. Award of contract without competition -- Notice -- Extension of contract without engaging in standard procurement process.**

(1) As used in this section:

(a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.

(b) "Transitional costs" include:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) system downtime;

(v) disruption of service;

(vi) staff time necessary to put the transition into effect;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs.

(c) "Transitional costs" do not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or contract drafting costs.

(d) "Trial use contract" means a contract between a procurement unit and a vendor for a procurement item that the procurement unit acquires for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(2) The division or a procurement unit with independent procurement authority may award a contract for a procurement item without competition if the procurement officer, the head of the procurement unit, or a designee of either who is senior to the procurement officer or the head of the procurement unit, determines in writing that:

(a) there is only one source for the procurement item;

(b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or

(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) Circumstances under which there is only one source for a procurement item

may include:

(a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;

(b) where transitional costs are unreasonable or cost prohibitive; or

(c) procurement of public utility services.

(4) (a) Subject to Subsection (4)(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a sole source procurement that, at a minimum, require publication of notice of a sole source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.

(b) Publication of notice under Section 63G-6a-406 is not required for:

(i) the procurement of public utility services pursuant to a sole source contract;

or

(ii) other sole source procurements provided by rule.

(5) The division or a procurement unit with independent procurement authority who awards a sole source contract on behalf of another procurement unit shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

(6) (a) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.

(b) A trial use contract shall:

(i) state that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;

(ii) state that the contract terminates upon completion of the trial use or testing period;

(iii) state that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;

(iv) state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and

(v) include, as applicable:

(A) test schedules;

(B) deadlines and a termination date;

(C) measures that will be used to evaluate the performance of the procurement item;

(D) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;

(E) the obligations of the procurement unit and vendor;

(F) provisions regarding the ownership of the procurement item during and after the trial use or testing period;

(G) an explanation of the grounds upon which the contract may be terminated;

(H) a limitation of liability;

(I) a consequential damage waiver provision;

(J) a statement regarding the confidentiality or nondisclosure of information;

- (K) a provision relating to any required bond or security deposit; and
- (L) other requirements unique to the procurement item for trial use or testing.

(c) Publication of notice under Section 63G-6a-406 is not required for a procurement pursuant to a trial use contract.

(7) The division or a procurement unit with independent procurement authority may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:

- (a) the award of a new contract for the procurement item is delayed due to a protest or appeal;
- (b) the standard procurement process is delayed due to unintentional error;
- (c) changes in industry standards require significant changes to specifications for the procurement item;
- (d) the extension is necessary to prevent the loss of federal funds;
- (e) the extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed;
- (f) the extension covers the period of time during which contract negotiations with a new provider are being conducted; or
- (g) the extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety, or welfare.

Amended by Chapter 196, 2014 General Session

**63G-6a-803. Emergency procurement.**

(1) Notwithstanding any other provision of this chapter, a procurement officer or the procurement officer's designee may authorize an emergency procurement without using a standard procurement process when an emergency condition exists.

(2) A procurement officer who authorizes an emergency procurement under Subsection (1) shall:

- (a) make the authorization in writing, stating the emergency condition upon which the emergency procurement is made; and
- (b) ensure that the procurement is made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or property.

Enacted by Chapter 347, 2012 General Session

**63G-6a-804. Purchase of prison industry goods.**

(1) (a) A procurement unit that is not a political subdivision shall purchase goods and services produced by the Utah Correctional Industries Division as provided in this section.

(b) A political subdivision of the state may, and is encouraged to, purchase goods and services under this section.

(c) A procurement unit is not required to use a standard procurement process to purchase goods or services under this section.

(2) On or before July 1 of each year, the director of the Utah Correctional

Industries shall:

(a) publish and distribute to all procurement units and other interested public entities a catalog of goods and services provided by the Correctional Industries Division, including a description and price of each item offered for sale; and

(b) update and revise the catalog described in Subsection (2)(a) during the year as the director considers necessary.

(3) (a) A procurement unit that is not a political subdivision of the state may not purchase any goods or services provided by the Correctional Industries Division from any other source unless it has been determined in writing by the director of Correctional Industries and by the procurement officer or in the case of institutions of higher education, the institutional procurement officer, that purchase from the Correctional Industries Division is not feasible due to one of the following circumstances:

(i) the good or service offered by the division does not meet the reasonable requirements of the procurement unit;

(ii) the good or service cannot be supplied within a reasonable time by the division; or

(iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(b) In cases of disagreement under Subsection (3)(a):

(i) the decision may be appealed to a board consisting of:

(A) the director of the Department of Corrections;

(B) the director of Administrative Services; and

(C) a neutral third party agreed upon by the other two members of the board;

(ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or

(iii) in the case of any of the following entities, a person designated by the applicable rulemaking authority shall make the final decision:

(A) a legislative procurement unit;

(B) a judicial procurement unit; or

(C) a public transit district.

Amended by Chapter 445, 2013 General Session

**63G-6a-805. Purchase from community rehabilitation programs.**

(1) As used in this section:

(a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory Board created under this section.

(b) "Central not-for-profit association" means a group of experts designated by the advisory board to do the following, under guidelines established by the advisory board:

(i) assist the advisory board with its functions; and

(ii) facilitate the implementation of advisory board policies.

(c) (i) "Community rehabilitation program" means a program that is operated

primarily for the purpose of the employment and training of persons with a disability by a government agency or qualified nonprofit organization which is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

(ii) A community rehabilitation program:

(A) maintains an employment ratio of at least 75% of the program employees under the procurement contract in question have severe disabilities;

(B) (I) complies with any applicable occupational health and safety standards prescribed by the United States Department of Labor; or

(II) is a supported employment program approved by the Utah State Office of Rehabilitation;

(C) has its principal place of business in Utah;

(D) produces any good provided under this section in Utah; and

(E) provides any service that is provided by individuals with a majority of whom domiciled in Utah.

(d) "Person with a disability" means a person with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(2) There is created within the division the Purchasing from Persons with Disabilities Advisory Board.

(3) The advisory board shall consist of three members, as follows:

(a) the director of the division or the director's designee;

(b) the executive director of the Utah State Office of Rehabilitation, created under Section 53A-24-103, or the executive director's designee; and

(c) a representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate.

(4) The advisory board shall meet, as needed, to facilitate the procurement of goods and services from community rehabilitation programs by a procurement unit under this chapter by:

(a) identifying goods and services that are available from community rehabilitation programs in accordance with the requirements of Subsection (7);

(b) approving prices in accordance with Subsection (7)(c) for goods and services that are identified under Subsection (4)(a);

(c) developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections (4)(a) and (b);

(d) reviewing bids received by a community rehabilitation program; and

(e) awarding and renewing specified contracts for set contract times, without competitive bidding, for the purchase of goods and services under Subsection (7).

(5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under this chapter.

(6) (a) The advisory board may designate a central not-for-profit association, appoint its members, and establish guidelines for its duties.

(b) The designated central not-for-profit association serves at the pleasure of the advisory board. The central not-for-profit association or its individual members may be removed by the advisory board at any time by a majority vote of the advisory board.

(c) Subject to the advisory board guidelines and discretion, a designated central not-for-profit association may be assigned to perform the following duties:

- (i) identify qualified community rehabilitation programs and the goods and services that they provide or have the potential to provide;
- (ii) help ensure that goods and services are provided at reasonable quality and delivery levels;
- (iii) recommend pricing for goods and services;
- (iv) review bids and recommend the award of contracts under the advisory board's direction;
- (v) collect and report program data to the advisory board and to the division;

and

- (vi) other duties specified by the advisory board.

(7) Except as provided under Subsection (9), notwithstanding any provision of this chapter to the contrary, each procurement unit shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Subsection (4)(c) if:

- (a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the procurement unit;

- (b) the community rehabilitation program can supply the good or service within a reasonable time; and

- (c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

(8) Each community rehabilitation program:

- (a) may submit a bid to the advisory board at any time and not necessarily in response to an invitation for bids; and

- (b) shall certify on any bid it submits to the advisory board or to a procurement unit under this section that it is claiming a preference under this section.

(9) During a fiscal year, the requirement for a procurement unit to purchase goods and services produced by a community rehabilitation program under the preferred procurement list under Subsection (7) does not apply if the division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.

(10) In the case of conflict between a purchase under this section and a purchase under Section 63G-6a-804, this section prevails.

Amended by Chapter 445, 2013 General Session

**63G-6a-806. Exception for public transit district contracting with a county or municipality.**

A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or an exception to a standard procurement process described in Part 8, Exception to Procurement Requirements:

- (1) contract with a county or municipality to receive money from the county or municipality; and

- (2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the applicable rulemaking

authority.

Enacted by Chapter 445, 2013 General Session

**63G-6a-901. Title.**

This part is known as "Cancellations, Rejections, and Debarment."

Enacted by Chapter 347, 2012 General Session

**63G-6a-902. Cancellation and rejection of bids and proposals.**

(1) An issuing procurement unit may cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the procurement unit in accordance with the rules of the applicable rulemaking authority.

(2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the contract file.

Amended by Chapter 445, 2013 General Session

**63G-6a-903. Determination of nonresponsibility of bidder or offeror.**

(1) A determination of nonresponsibility of a bidder or offeror made by an issuing procurement unit shall be made in writing, in accordance with the rules of the applicable rulemaking authority.

(2) The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror.

(3) Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of a procurement unit without prior written consent by the bidder or offeror.

Amended by Chapter 445, 2013 General Session

**63G-6a-904. Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Appeal.**

(1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a procurement unit with independent procurement authority may:

(i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or

(ii) suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), the chief procurement officer or head of a procurement unit with independent procurement authority shall:

- (i) consult with:
  - (A) the procurement unit involved in the matter for which debarment or suspension is sought; and
  - (B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;
- (ii) give the person at least 10 days' prior written notice of:
  - (A) the reasons for which debarment or suspension is being considered; and
  - (B) the hearing under Subsection (1)(b)(iii); and
- (iii) hold a hearing in accordance with Subsection (1)(c).
  - (c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head of a procurement unit with independent procurement authority may:
    - (A) subpoena witnesses and compel their attendance at the hearing;
    - (B) subpoena documents for production at the hearing;
    - (C) obtain additional factual information; and
    - (D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the chief procurement officer or head of a procurement unit with independent procurement authority to make a decision on the proposed debarment or suspension.
  - (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).
  - (iii) The chief procurement officer or head of a procurement unit with independent procurement authority shall:
    - (A) record a hearing under Subsection (1)(b)(iii);
    - (B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final;
    - (C) for an appeal of a debarment or suspension by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the procurement policy board chair a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1702 or after receiving a request from the procurement policy board chair; and
    - (D) for an appeal of a debarment or suspension by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the Utah Court of Appeals a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.
- (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(b)(v) does not affect a person's right to later question or challenge the jurisdiction of the chief procurement officer or head of a procurement unit with independent procurement authority to hold a hearing or issue a decision.
- (v) The chief procurement officer or head of a procurement unit with independent procurement authority shall:
  - (A) promptly issue a written decision regarding a proposed debarment or



suspension, unless the matter is settled by mutual agreement; and

(B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.

(vi) A written decision under Subsection (1)(b)(v) shall:

(A) state the reasons for the debarment or suspension, if debarment or suspension is ordered;

(B) inform the person who is debarred or suspended of the right to judicial or administrative review as provided in this chapter; and

(C) indicate the amount of the security deposit or bond required under Section 63G-6a-1703 and how that amount was calculated.

(vii) (A) A decision of debarment or suspension issued by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1702.

(B) A decision of debarment or suspension issued by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1802.

(2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.

(3) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the procurement unit;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract;

(e) a violation of this chapter; or

(f) any other cause that the chief procurement officer or the head of a procurement unit with independent procurement authority determines to be so serious and compelling as to affect responsibility as a contractor for the procurement unit, including debarment by another governmental entity.

(4) A person who is debarred or suspended under this section may appeal the debarment or suspension:

(a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a procurement unit other than a legislative procurement unit, a judicial procurement unit,

a local government procurement unit, or a public transit district; or

(b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district.

(5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:

(a) independent of any effort or proceeding under this section to debar or suspend the person; and

(b) even if the procurement unit does not choose to seek debarment or suspension.

Amended by Chapter 196, 2014 General Session

**63G-6a-905. Quote, bid, offer, or contract prohibited by person with outstanding tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

(1) Except as provided in Subsection (2), a person with an outstanding tax lien in the state may not:

(a) submit a quote, bid, or offer to a procurement unit; or

(b) contract to provide a procurement item to a procurement unit.

(2) Subsection (1) does not apply to the extent that a procurement officer determines it is in the public interest to grant an exception to the requirements of Subsection (1) for a particular quote, bid, offer, or contract specified by the procurement officer.

(3) A procurement unit may reject a quote, bid, or offer submitted in violation of Subsection (1).

Enacted by Chapter 445, 2013 General Session

**63G-6a-1001. Title.**

This part is known as "Preferences."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1002. Reciprocal preference for providers of state products.**

(1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item.

(c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the procurement items offered are produced, manufactured,

mined, grown, or performed in Utah.

(d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.

(2) (a) If the bidder submitting the lowest responsive and responsible bid offers procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the bidder offering procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the issuing procurement unit submits to the preferred bidder.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3) (a) If there is more than one preferred bidder, the issuing procurement unit shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the issuing procurement unit shall comply with the rules of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 445, 2013 General Session

**63G-6a-1003. Preference for resident contractors.**

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2) (a) When awarding contracts for construction, an issuing procurement unit shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3) (a) In order to receive the reciprocal preference under this section, the

bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.

(4) (a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor whose principal place of business is in a state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5) (a) If there is more than one preferred resident contractor, the issuing procurement unit shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the issuing procurement unit shall comply with the rules of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 445, 2013 General Session

**63G-6a-1004. Exception for federally funded contracts.**

This part does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

Enacted by Chapter 347, 2012 General Session

**63G-6a-1101. Title.**

This part is known as "Bonds."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1102. Bid security requirements -- Directed suretyship prohibited -- Penalty.**

(1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

(2) When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the applicable rulemaking authority, the issuing procurement unit determines that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Section 63G-6a-605. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(4) (a) When issuing an invitation for a bid under this chapter, the procurement officer or the head of an issuing procurement unit responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Amended by Chapter 445, 2013 General Session

**63G-6a-1103. Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.**

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and

(b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (2)(a) is guilty of an infraction.

(3) Rules of the applicable rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the

procurement unit.

(4) A person shall have a right of action on a payment bond under this section for any unpaid amount due to the person if:

(a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.

(5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

(6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Amended by Chapter 196, 2014 General Session

**63G-6a-1104. Preliminary notice requirement.**

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1b-202, except that this section does not apply:

(a) to an individual performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1b-201 for the project or improvement for which labor, service, equipment, or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.

(4) Subsection (1)(a) does not exempt the following from complying with the requirements of this section:

(a) a temporary labor service company or organization;

(b) a professional employer company or organization; or

(c) any other entity that provides labor.

Amended by Chapter 278, 2012 General Session

Amended by Chapter 330, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1105. Form of bonds -- Effect of certified copy.**

(1) The form of the bonds required by this part shall be established by rule

made by the applicable rulemaking authority.

(2) Any person may obtain from the procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.

(3) A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Amended by Chapter 196, 2014 General Session

**63G-6a-1201. Title.**

This part is known as "Contracts and Change Orders."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1202. Standard contract clauses encouraged.**

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Repealed and Re-enacted by Chapter 196, 2014 General Session

**63G-6a-1203. Contracts -- Certain indemnification provisions forbidden.**

(1) As used in this section, "design professional" means:

(a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

(b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; or

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

(b) Subsection (2)(a) may not be waived by contract.

(c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Amended by Chapter 445, 2013 General Session

**63G-6a-1204. Multiyear contracts.**

(1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:

(a) the procurement officer determines, in the discretion of the procurement officer, that entering into a multiyear contract is in the best interest of the procurement

unit; and

(b) the invitation for bids or request for proposals:

(i) states the term of the contract, including all possible renewals of the contract;

(ii) states the conditions for renewal of the contract; and

(iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.

(2) In making the determination described in Subsection (1)(a), the procurement officer shall consider whether entering into a multiyear contract will:

(a) result in significant savings to the procurement unit, including:

(i) reduction of the administrative burden in procuring, negotiating, or administering contracts;

(ii) continuity in operations of the procurement unit; or

(iii) the ability to obtain a volume or term discount;

(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or

(c) provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.

(3) (a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.

(b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract, including a contract that was awarded outside of an invitation for bids or request for proposals process, may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract.

(4) A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:

(a) adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;

(b) continuation or renewal of the contract before the money is appropriated or received is permitted by the federal government; and

(c) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(5) A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:

(a) the portion of the contract that is to be funded by funds of a public entity are appropriated;

(b) adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;

(c) continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and

(d) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(6) A procurement unit may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract,



unless the procurement unit engages in a new standard procurement process or complies with an exception, described in this chapter, to using a standard procurement process.

(7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:

(a) the procurement officer determines, in writing, that:

(i) a longer period is necessary in order to obtain the procurement item;

(ii) a longer period is customary for industry standards; or

(iii) a longer period is in the best interest of the procurement unit; and

(b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.

(8) This section does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

Amended by Chapter 196, 2014 General Session

**63G-6a-1204.5. Multiple award contracts.**

(1) (a) The division or a procurement unit with independent procurement authority may enter into multiple award contracts with bidders or offerors.

(b) The applicable rulemaking authority may make rules, consistent with this section, regulating the use of multiple award contracts.

(2) Multiple award contracts may be in a procurement unit's best interest if award to two or more bidders or offerors for similar procurement items is needed or desired for adequate delivery, service, availability, or product compatibility.

(3) A procurement unit that enters into multiple award contracts under this section shall:

(a) exercise care to protect and promote competition among bidders or offerors when seeking to enter into multiple award contracts;

(b) name all eligible users of the multiple award contracts in the invitation for bids or request for proposals; and

(c) if the procurement unit anticipates entering into multiple award contracts before issuing the invitation for bids or request for proposals, state in the invitation for bids or request for proposals that the procurement unit may enter into multiple award contracts at the end of the procurement process.

(4) A procurement unit that enters into multiple award contracts under this section shall:

(a) obtain, under the multiple award contracts, all of its normal, recurring requirements for the procurement items that are the subject of the contracts until the contracts terminate; and

(b) reserve the right to obtain the procurement items described in Subsection (4)(a) separately from the contracts if:

(i) there is a need to obtain a quantity of the procurement items that exceeds the amount specified in the contracts; or

(ii) the procurement officer makes a written finding that the procurement items available under the contract will not effectively or efficiently meet a nonrecurring special

need of a procurement unit.

(5) An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Renumbered and Amended by Chapter 445, 2013 General Session

**63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types.**

(1) Except as otherwise provided in this section, and subject to rules made under this section by the applicable rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.

(2) An applicable rulemaking authority:

(a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and

(b) may not make rules that permit the use of a contract:

(i) that is prohibited under this section; or

(ii) in a manner that is prohibited under this section.

(3) A procurement officer, the head of an issuing procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed price contract, unless the procurement officer makes a written determination that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and

(c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:

(i) the type and complexity of the procurement item;

(ii) the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:

(A) the difficulty of determining definitive specifications;

(B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or

(C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;

(iii) the administrative costs to the procurement unit and the contractor;

(iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;

(v) the impact that the choice of contract type may have upon the level of competition for award of the contract;

(vi) the stability of material prices, commodity prices, and wage rates in the applicable market;

(vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;

(viii) the impact of any applicable governmental regulation relating to the contract; and

(ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.

(4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:

- (a) a fixed price contract;
- (b) a fixed price contract with price adjustment;
- (c) a time and materials contract;
- (d) a labor hour contract;
- (e) a definite quantity contract;
- (f) an indefinite quantity contract;
- (g) a requirements contract;
- (h) a contract based on a rate table in accordance with industry standards; or
- (i) a contract that includes one of the following construction delivery methods:
  - (i) design-build;
  - (ii) design-bid-build; or
  - (iii) construction manager/general contractor.

(5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:

- (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;
- (b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
- (c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.

(6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement officer makes a written determination that:

- (a) (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or
- (ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and
- (b) the proposed contractor's accounting system:
  - (i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and
  - (ii) will allocate costs in accordance with generally accepted accounting principles.

Amended by Chapter 196, 2014 General Session

**63G-6a-1206. Rules and regulations to determine allowable incurred costs -- Required information -- Auditing of books.**

(1) (a) The applicable rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement officer or head of the issuing procurement unit approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and

(b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.

(3) The procurement officer shall ensure that the date specified under Subsection (2)(b) is before:

(a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the applicable rulemaking authority; or

(b) the pricing of any change order that is expected to exceed an amount established by rule made by the applicable rulemaking authority.

(4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.

(5) A procurement unit is not required to comply with Subsection (2) if:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

(c) the contract price is set by law or rule; or

(d) the procurement states, in writing:

(i) that, in accordance with rules made by the applicable rulemaking authority, the requirements of Subsection (2) may be waived; and

(ii) the reasons for the waiver.

(6) The procurement officer or audit entity under contract with the procurement unit may, at reasonable times and places, only to the extent that the books and records relate to the applicable cost or pricing data, audit the books and records of:

(a) a person who has submitted cost or pricing data pursuant to this section; or

(b) a contractor or subcontractor under a contract or subcontract other than a firm fixed price contract.

(7) Unless a shorter time is provided for by contract:

(a) a person described in Subsection (6)(a) shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the contract ends;

(b) a contractor shall maintain the books and records described in Subsection (6) for three years after the day on which the fiscal year in which final payment under the prime contract ends; and

(c) a subcontractor shall maintain the books and records described in

Subsection (6) for three years after the day on which the fiscal year in which final payment is made under the subcontract ends.

Amended by Chapter 196, 2014 General Session

**63G-6a-1207. Certification of change order.**

(1) Under a construction contract, a change order that increases the contract amount may not be made without prior written certification that the change order is within the determined project or contract budget by:

(a) the fiscal officer of the entity responsible for funding the project or contract;  
or

(b) the official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget.

(2) If a change order will result in an increase in the total project or contract budget, the change order may not be made, unless:

(a) sufficient funds are added to the project contract or budget; or  
(b) the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed before the change order under consideration.

(3) Notwithstanding any other provision of this section, it shall be presumed that this section has been complied with if the contractor reasonably relies on an executed change order.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1208. Installment payments -- Contract prepayments.**

(1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement officer makes a written finding that:

(a) the use of installment payments are in the interest of the procurement unit;  
(b) installment payments are not used as a method of avoiding budgetary constraints;

(c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;

(d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and

(e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.

(2) A procurement unit may not pay for a procurement item before the procurement item is received by the procurement unit, unless the procurement officer makes a written finding that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement item is received by the procurement unit.

(3) Circumstances where prepayment may be necessary for, or beneficial to, the

procurement unit include:

- (a) when it is customary in the industry to prepay for the procurement item;
- (b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or

- (c) other circumstances permitted by rule made by the applicable rulemaking authority.

- (4) The applicable rulemaking authority may make rules governing prepayments.

- (5) A prepaid expenditure shall be supported by documentation indicating:

- (a) the amount of the prepayment;
  - (b) the prepayment schedule;
  - (c) the procurement items to which each prepayment relates;
  - (d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and

- (e) all other terms and conditions relating to the payments and the procurement items.

- (6) The procurement officer or the procurement officer's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Enacted by Chapter 445, 2013 General Session

**63G-6a-1209. Leases.**

- (1) As used in this section, "lease" means for a procurement unit to lease or lease-purchase a procurement item from a person.

- (2) This section does not apply to the lease of real property.

- (3) A procurement unit may not lease a procurement item unless the procurement unit complies with the requirements of this section.

- (4) A procurement unit may lease a procurement item if:

- (a) the procurement officer determines that it is in the best interest of the procurement unit to lease the procurement item, after the procurement officer:

- (i) investigates alternative means of obtaining the procurement item; and
    - (ii) considers the costs and benefits of the alternative means of obtaining the procurement item;

- (b) all conditions for renewal and cost are included in the lease;

- (c) the lease is awarded through a standard procurement process, or an exception to a standard procurement process described in Part 8, Exceptions to Procurement Requirements;

- (d) for a standard procurement process, the invitation for bids, request for proposals, or request for quotes states:

- (i) that the procurement unit is seeking, or willing to consider, a lease; and
    - (ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a lease-purchase;

- (e) the lease is not used to avoid competition; and

(f) the lease complies to all other provisions of law or rule applicable to the lease.

Enacted by Chapter 445, 2013 General Session

**63G-6a-1210. Contract provisions for incentives, damages, and penalties.**

A procurement unit may include in a contract terms that provide for:

- (1) incentives, including bonuses;
- (2) payment of damages, including liquidated damages; or
- (3) penalties.

Enacted by Chapter 445, 2013 General Session

**63G-6a-1301. Title.**

This part is known as "General Construction Provisions."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1302. Alternative methods of construction contracting management.**

(1) The applicable rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.

(2) The rules described in Subsection (1) shall:

(a) grant to the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(b) require the procurement officer to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.

(3) Before choosing a construction contracting management method, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project shall consider the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project;
- (c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the source of funding and any resulting constraints necessitated by the funding source;
- (g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and

(h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(4) An applicable rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.

(5) The rules described in Subsection (2) shall require that:

(a) the construction manager/general contractor be selected using:

(i) a standard procurement process; or

(ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

(b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.

(6) Procurement rules adopted by the State Building Board under Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.

(7) A design-build contract may include a provision for obtaining the site for the construction project.

(8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Amended by Chapter 445, 2013 General Session

**63G-6a-1303. Drug and alcohol testing required for state construction contracts.**

(1) As used in this section:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or



alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

- (i) in accordance with a drug and alcohol testing policy; and
- (ii) on the basis of a random selection process.

(e) "State executive entity" means:

(i) a state executive branch:

- (A) department;
- (B) division;
- (C) agency;
- (D) board;
- (E) commission;
- (F) council;
- (G) committee; or
- (H) institution; or

(ii) a state institution of higher education, as defined in Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by a state executive entity.

(2) Except as provided in Subsection (7), a state executive entity may not enter into a state construction contract unless the public construction contract requires that the contractor demonstrate to the state executive entity that the contractor:

(a) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(b) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection (2)(a);

(c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and

(d) requires that as a condition of contracting with the contractor, a subcontractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection (2)(d)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the subcontractor.

(3) (a) Except as otherwise provided in this Subsection (3), if a contractor or subcontractor fails to comply with Subsection (2), the contractor or subcontractor may

be suspended or debarred in accordance with this chapter.

(b) A state executive entity shall include in a state construction contract:

(i) a reference to the rules described in Subsection (4)(b); or

(ii) if the applicable rulemaking authority has not made the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(c) (i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection (2).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).

(4) An applicable rulemaking authority:

(a) may make rules that establish the requirements and procedures a contractor is required to follow to comply with Subsection (2); and

(b) shall make rules that establish:

(i) the penalties that may be imposed in accordance with Subsection (3); and

(ii) a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.

(5) The failure of a contractor or subcontractor to meet the requirements of Subsection (2):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings; and

(b) may not be used by a state executive entity, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(6) (a) After a state executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor, or take any other action to ensure compliance with this section.

(b) The state is not liable in any action related to this section, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

- (D) disciplinary or rehabilitative action on the basis of a test result;
- (v) an individual being under the influence of drugs or alcohol; or
- (vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

(7) This section does not apply if the state executive entity determines that the application of this section would severely disrupt the operation of a procurement unit to the detriment of the procurement unit or the general public, including:

- (a) jeopardizing the receipt of federal funds;
- (b) causing the state construction contract to be a sole source contract; or
- (c) causing the state construction contract to be an emergency procurement.

(8) If a contractor or subcontractor meets the requirements of this section, this section may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

Amended by Chapter 445, 2013 General Session

**63G-6a-1401. Title.**

This part is known as "Transportation Contracts."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1402. Procurement of design-build transportation project contracts.**

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

- (i) the Department of Transportation;
- (ii) a county of the first or second class, as defined in Section 17-50-501;
- (iii) a municipality of the first class, as defined in Section 10-2-301;
- (iv) a public transit district that has more than 200,000 people residing within its boundaries; and
- (v) a public airport authority.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this

section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold described in Subsection (2).

(d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.

(4) (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with board rules.

(c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:

(i) construction experience;

(ii) design experience;

(iii) financial, manpower, and equipment resources available for the project; and

(iv) experience in other design-build transportation projects with attributes similar to the project being procured.

(d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which may not be less than two.

(5) The transportation agency shall:

(a) evaluate the responses received from the request for qualifications;

(b) select from their number those qualified to submit proposals; and

(c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

(6) Except as provided in Subsection (7), if the transportation agency fails to receive at least two qualified eligible competing proposals, the transportation agency shall readvertise the project.

(7) A transportation agency may award a contract for a transportation project that has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

(a) only a single proposal is received; and

(b) the transportation agency determines that:

(i) the proposal is advantageous to the state; and

(ii) the proposal price is reasonable.

(8) The transportation agency shall issue a request for proposals to those qualified respondents that:

(a) includes a scope of work statement constituting an information for proposal

that may include:

- (i) preliminary design concepts;
  - (ii) design criteria, needs, and objectives;
  - (iii) warranty and quality control requirements;
  - (iv) applicable standards;
  - (v) environmental documents;
  - (vi) constraints;
  - (vii) time expectations or limitations;
  - (viii) incentives or disincentives; and
  - (ix) other special considerations;
  - (b) requires submitters to provide:
    - (i) a sealed cost proposal;
    - (ii) a critical path matrix schedule, including cash flow requirements;
    - (iii) proposal security; and
    - (iv) other items required by the department for the project; and
  - (c) may include award of a stipulated fee to be paid to offerors who submit unsuccessful proposals.
- (9) The transportation agency shall:
- (a) evaluate the submissions received in response to the request for proposals from the prequalified offerors;
  - (b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
  - (c) after considering price and other identified factors, award the contract to the responsive and responsible offeror whose proposal is most advantageous to the transportation agency or the state.

Amended by Chapter 196, 2014 General Session

**63G-6a-1403. Procurement of tollway development agreements.**

(1) As used in this section, "tollway development agreement" is as defined in Section 72-6-202.

(2) The Department of Transportation and the Transportation Commission:

(a) may solicit a tollway development agreement proposal by following the requirements of this section;

(b) may award a solicited tollway development agreement contract for any tollway project by following the requirements of this section; and

(c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of tollway development agreement proposals in addition to those required by this section.

(3) (a) Before entering into a tollway development agreement, the Department of Transportation may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with board rules.

(c) The Department of Transportation shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least provide:

- (i) a demonstration of their experience with other transportation concession projects with attributes similar to the project being procured;
- (ii) a financial statement of the firm or consortium of firms making the proposal;
- (iii) a conceptual project development plan and financing plan;
- (iv) the legal structure of the firm or consortium of firms making the proposal;
- (v) the organizational structure for the project; and
- (vi) a statement describing why the firm or consortium of firms is best qualified for the project.

(d) The request for qualifications shall identify the number of eligible competing offerors that the Department of Transportation will select to submit a proposal.

(4) The Department of Transportation shall:

- (a) evaluate the responses received from the request for qualifications;
- (b) select from their number those qualified to submit proposals; and
- (c) invite those respondents to submit proposals based upon the Department of Transportation's request for proposals.

(5) The Department of Transportation shall issue a request for proposals to those qualified respondents that may require, as appropriate for the procurement:

- (a) a description of the proposed project or projects;
- (b) a financial plan for the project, including:
  - (i) the anticipated financial commitment of all parties;
  - (ii) equity, debt, and other financing mechanisms;
  - (iii) an analysis of the projected return, rate of return, or both; and
  - (iv) the monetary benefit and other value to a government entity;
- (c) assumptions about user fees or toll rates;
- (d) a project development and management plan, including:
  - (i) the contracting structure;
  - (ii) the plan for quality management;
  - (iii) the proposed toll enforcement plan; and
  - (iv) the plan for safety management; and
- (e) that the proposal to comply with the minimum guidelines for tollway development agreement proposals under Section 72-6-204.

(6) The Department of Transportation and the Transportation Commission:

- (a) shall evaluate the submissions received in response to the request for proposals from the prequalified offerors;
- (b) shall comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
- (c) may, after considering price and other identified factors and complying with the requirements of Section 72-6-206, award the contract to the responsive and responsible offeror whose proposal is most advantageous to the state.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1501. Title.**

This part is known as "Architect-Engineer Services."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1502. Policy regarding architect-engineer services.**

(1) It is the policy of this state to publicly announce all requirements for architect-engineer services through a request for statement of qualifications and to negotiate contracts for architect-engineer services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(2) Architect-engineer services shall be procured as provided in this part except as otherwise provided in Sections 63G-6a-403, 63G-6a-404, 63G-6a-408, 63G-6a-802, and 63G-6a-803.

(3) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Amended by Chapter 196, 2014 General Session

**63G-6a-1503. Evaluation committee for architect-engineer services.**

(1) In the procurement of architect-engineer services, the procurement officer or the head of an issuing procurement unit shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications.

(2) The director of the Division of Facilities Construction and Management shall appoint an evaluation committee for architect-engineer services contracts under its authority.

(3) An evaluation committee for architect-engineer services contracts not under the authority of the Division of Facilities Construction and Management shall be established in accordance with rules made by the applicable rulemaking authority.

(4) An evaluation committee shall:

(a) evaluate current statements of qualifications and performance data on file with the procurement unit, together with those that may be submitted by other firms in response to the announcement of a proposed contract;

(b) consider no less than three firms; and

(c) based upon criteria established and published by the issuing procurement unit, select no less than three of the firms considered to be the most highly qualified to provide the services required.

Amended by Chapter 196, 2014 General Session

**63G-6a-1504. Selection as part of design-build or lease.**

Notwithstanding any other provision of this chapter, architect-engineer services may be procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, if the qualifications of those providing the architect-engineer services are part of the consideration in the selection process.

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1505. Determination of compensation for architect-engineer services.**

(1) The procurement officer shall award a contract to a qualified firm at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.

(2) In making the determination described in Subsection (1), the procurement officer shall take into account the services':

- (a) estimated value;
- (b) scope;
- (c) complexity; and
- (d) professional nature.

(3) If the procurement officer is unable to agree to a satisfactory contract with the firm first selected, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

- (a) formally terminate discussions with that firm; and
- (b) undertake discussions with a second qualified firm.

(4) If the procurement officer is unable to agree to a satisfactory contract with the second firm selected, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

- (a) formally terminate discussions with that firm; and
- (b) undertake discussions with a third qualified firm.

(5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the selected firms, the procurement officer shall:

- (a) select additional firms; and
- (b) continue discussions in accordance with this part until an agreement is reached.

Amended by Chapter 196, 2014 General Session

**63G-6a-1506. Restrictions on procurement of architect-engineer services.**

(1) Except as provided in Subsection (2), when the division or a procurement unit with independent procurement authority, in accordance with Section 63G-6a-1502, elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:

- (a) a higher education entity, or any part of one, may not submit a proposal in response to the procurement unit's competitive procurement process; and
- (b) the procurement unit may not award a contract to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.

(2) Subsection (1) does not apply when the procurement unit is procuring architect or engineer services for contracts related to research activities and technology transfer.



Amended by Chapter 445, 2013 General Session

**63G-6a-1601. Title.**

This part is known as "Controversies and Protests."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1602. Protest -- Time for filing -- Authority to resolve protest.**

(1) (a) A protest may be filed with the protest officer by:

(i) an actual or prospective bidder or offeror who is aggrieved in connection with a procurement; or

(ii) a prospective contractor who is aggrieved in connection with an award of a contract.

(b) (i) A protest under Subsection (1)(a) relating to an invitation for bids or a request for proposals shall be filed:

(A) before the opening of bids or the closing date for proposals; or

(B) if the person filing the protest did not know and should not have known of the facts giving rise to the protest before the bid opening or the closing date for proposals, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest.

(ii) A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) but involving a deadline established for the submission of a price or response shall be filed:

(A) before the deadline for the submission of a price or response; or

(B) if the person filing the protest did not know and reasonably should not have known of the facts giving rise to the protest before the deadline for the submission of a price or response, within seven days after the day on which the person knows or reasonably should have known of the facts giving rise to the protest.

(iii) A protest under Subsection (1)(a) relating to a form of procurement not described in Subsection (1)(b)(i) or (ii) shall be filed within seven days after the day on which the person filing the protest knows or should have known of the facts giving rise to the protest.

(2) A person who files a protest under this section shall include in the filing document:

(a) the person's address of record and email address of record; and

(b) a concise statement of the grounds upon which the protest is made.

(3) A person described in Subsection (1) who fails to file a protest within the time prescribed in Subsection (1)(b) may not:

(a) protest to the protest officer a solicitation or award of a contract; or

(b) file an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.

(4) Subject to the applicable requirements of Section 63G-10-403, a protest officer or the head of a procurement unit may enter into a settlement agreement to resolve a protest.

Amended by Chapter 196, 2014 General Session

**63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.**

(1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.

(2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest.

(3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:

(a) dismiss the protest if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact that needs to be resolved in order to determine whether the protest should be upheld.

(4) (a) If a hearing is held on a protest, the protest officer may:

(i) subpoena witnesses and compel their attendance at the protest hearing;

(ii) subpoena documents for production at the protest hearing;

(iii) obtain additional factual information; and

(iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

(b) The Rules of Evidence do not apply to a protest hearing.

(c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:

(i) who may intervene; and

(ii) the time and manner of intervention.

(d) A protest officer shall:

(i) record each hearing held on a protest under this section;

(ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and

(iii) submit to the procurement policy board chair a copy of the protest officer's written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving:

(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or

(B) a request from the chair of the procurement policy board.

(e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) (a) The deliberations of a protest officer may be held in private.

(b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(6) (a) A protest officer, or the protest officer's designee, shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.

(b) The decision shall:

(i) state the reasons for the action taken;

(ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and

(iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.

(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.

(7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.

(8) (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.

(b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.

(9) If the protest officer does not issue the written decision regarding a protest or a contract controversy within 30 calendar days after the day on which a written request for a final decision is filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor, prospective contractor, or contractor may proceed as if an adverse decision had been received.

(10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

Amended by Chapter 196, 2014 General Session

**63G-6a-1604. Dismissal of protest not filed in accordance with requirements.**

The protest officer may dismiss a protest described in Section 63G-6a-1602 that is not filed in accordance with the requirements of this part.

Enacted by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

**63G-6a-1701. Title.**

This part is known as "Procurement Appeals Board."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1702. Appeal to Utah State Procurement Policy Board --  
Appointment of procurement appeals panel -- Proceedings.**

- (1) This part applies to all procurement units other than:
  - (a) a legislative procurement unit;
  - (b) a judicial procurement unit;
  - (c) a local government procurement unit; or
  - (d) a public transit district.
- (2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the protest decision to the board by filing a written notice of appeal with the chair of the board within seven days after:
  - (i) the day on which the written decision described in Section 63G-6a-1603 is:
    - (A) personally served on the party or the party's representative; or
    - (B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6a-1602(3); or
  - (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(7) ends, if a written decision is not issued before the end of the 30-day period.
- (b) A person appealing a debarment or suspension of a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal with the chair of the board no later than seven days after the debarment or suspension.
- (c) A notice of appeal under Subsection (2)(a) or (b) shall:
  - (i) include the address of record and email address of record of the party filing the notice of appeal; and
  - (ii) be accompanied by a copy of any written protest decision or debarment or suspension order.
- (3) A person may not base an appeal of a protest under this section on a ground not specified in the person's protest under Section 63G-6a-1602.
- (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
  - (a) a decision on the protest has been issued; or
  - (b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(7), or a longer period agreed to by the parties, has passed.
- (5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:
  - (a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:
    - (i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom is:

- (A) a member of the board; or
- (B) a designee of a member appointed under Subsection (4)(a)(i)(A), if the designee is approved by the chair; and
- (ii) one of the members of the procurement appeals panel to be the chair of the panel;
- (b) may:
  - (i) appoint the same procurement appeals panel to hear more than one appeal;or
  - (ii) appoint a separate procurement appeals panel for each appeal;
- (c) may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action complained of; and
- (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision.
- (6) A procurement appeals panel described in Subsection (5) shall:
  - (a) consist of an odd number of members;
  - (b) conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed:
    - (i) unless all parties stipulate to a later date; and
    - (ii) subject to Subsection (8);
  - (c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and
  - (d) within seven days after the day on which the proceeding ends:
    - (i) issue a written decision on the appeal; and
    - (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.
- (7) (a) The deliberations of a procurement appeals panel may be held in private.
- (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (8) A procurement appeals panel may continue a procurement appeals proceeding beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel determines that the continuance is in the interests of justice.
- (9) A procurement appeals panel:
  - (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:
    - (i) the protest decision;
    - (ii) the record considered by the person who issued the protest decision; and
    - (iii) if a protest hearing was held, the record of the protest hearing;
  - (b) may not take additional evidence;
  - (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions and receive responses regarding the appeal, the protest decision, or the record in order to assist the panel to understand the appeal, the protest decision, and the record; and
  - (d) shall uphold the decision of the protest officer, unless the decision is

arbitrary and capricious or clearly erroneous.

(10) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

(a) shall remand the matter to the protest officer, to cure the problem or render a new decision;

(b) may recommend action that the protest officer should take; and

(c) may not order that:

(i) a contract be awarded to a certain person;

(ii) a contract or solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection

(10)(a).

(11) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:

(a) expedited proceedings; and

(b) electronic participation in the proceedings by panel members and participants.

(12) The Rules of Evidence do not apply to an appeals proceeding.

Amended by Chapter 196, 2014 General Session

**63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.**

(1) Except as provided by rule made under Subsection (2)(a), a person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.

(2) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):

(i) \$20,000, if the total contract value is under \$500,000;

(ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

(iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

(iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

(v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

(vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;

(vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;

(viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;

(ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than

\$128,000,000;

(x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;

(xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000; and

(xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

(b) \$20,000, for an appeal:

(i) relating to any type of procurement process other than an invitation for bids or request for proposals;

(ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or

(iii) of a debarment or suspension.

(3) (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:

(i) the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;

(ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

(b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:

(i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;

(ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

(4) The protest officer shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the General Fund under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the General Fund under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section

shall forfeit to the General Fund if:

- (a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and
- (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Amended by Chapter 196, 2014 General Session

**63G-6a-1704. Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal to the board is filed under Section 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by the procurement appeals panel appointed for the appeal.

Amended by Chapter 445, 2013 General Session

**63G-6a-1705. Factual determination of procurement appeals panel final and conclusive.**

A determination of an issue of fact by a procurement appeals panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

Amended by Chapter 91, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

**63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

(1) The chair of the board shall dismiss an appeal filed under Section 63G-6a-1702 if the person filing the appeal fails to comply with any of the requirements of Subsection 63G-6a-1702(2) or Section 63G-6a-1703.

(2) A procurement appeals panel may dismiss an appeal that is assigned to the procurement appeals panel if the appeal is not filed in accordance with the requirements of this chapter.

Amended by Chapter 196, 2014 General Session

**63G-6a-1801. Title.**

This part is known as "Appeals to Court and Court Proceedings."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1802. Appeal to Utah Court of Appeals.**

(1) (a) As provided in this part:

(i) a person may appeal a dismissal of an appeal by the board chair under Subsection 63G-6a-1706(1);



(ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;

(iii) subject to Subsection (2), a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel;

(iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district may appeal that decision; and

(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district may appeal the debarment or suspension.

(b) A person seeking to appeal a dismissal, decision, or debarment or suspension under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal, decision, or debarment or suspension.

(2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:

(a) recommended by the protest officer involved; and

(b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) A person appealing a dismissal, decision, protest, debarment, or suspension under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.

(4) The Utah Court of Appeals:

(a) shall consider the appeal as an appellate court;

(b) may not hear the matter as a trial de novo; and

(c) may not overturn a finding, dismissal, decision, or debarment or suspension, unless the finding, dismissal, decision, or debarment or suspension is arbitrary and capricious or clearly erroneous.

(5) The Utah Court of Appeals is encouraged to:

(a) give an appeal made under this section priority; and

(b) consider the appeal and render a decision in an expeditious manner.

Amended by Chapter 196, 2014 General Session

**63G-6a-1901. Title.**

This part is known as "General Provisions Related to Protest or Appeal."

Enacted by Chapter 347, 2012 General Session

**63G-6a-1902. Limitation on challenges -- Compliance with federal law.**

(1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.

(2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter.

(3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Amended by Chapter 196, 2014 General Session

**63G-6a-1903. Effect of timely protest or appeal.**

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

(1) during the pendency of a timely:

(a) protest under Subsection 63G-6a-1602(1);

(b) appeal of a protest under Section 63G-6a-1702; or

(c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and

(2) until:

(a) all administrative and judicial remedies are exhausted;

(b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

(i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

(ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:

(i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

(ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or

(iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit,

makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Amended by Chapter 196, 2014 General Session

**63G-6a-1904. Costs to or against protestor.**

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the procurement unit:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) When a protest is not sustained by a procurement appeals panel, the protestor shall reimburse the issuing procurement unit for expenses incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney general's office, the per diem and expenses paid by the issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.

(3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Amended by Chapter 196, 2014 General Session

**63G-6a-1906. Effect of prior determination by agents of procurement unit.**

In any judicial action under Section 63G-6a-1802, determinations by employees, agents, or other persons appointed by the procurement unit shall be final and conclusive only as provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

Amended by Chapter 196, 2014 General Session

**63G-6a-1907. Effect of violation found after award of contract.**

(1) If after award of a contract it is determined administratively or upon administrative or judicial review that a procurement or award of a contract is in violation of law:

(a) (i) if the person awarded the contract did not act fraudulently or in bad faith:

(A) the contract may be ratified and affirmed if it is in the best interests of the procurement unit; or

(B) the contract may be terminated; and

(ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before the termination, plus a reasonable profit; or

(b) if the person awarded the contract acted fraudulently or in bad faith:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if it is in the best interests of the procurement unit, without prejudice to the procurement unit's rights to any appropriate damages.

(2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Amended by Chapter 196, 2014 General Session

**63G-6a-1909. Affect of violation found prior to award of contract.**

If, before award of a contract, it is determined administratively or upon administrative or judicial review that a procurement or proposed award of a contract is in violation of law, the procurement or proposed award shall be cancelled or revised to comply with the law.

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 347, 2012 General Session

**63G-6a-1910. Interest rates.**

(1) In controversies between a procurement unit and a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).

(3) This section does not apply to public assistance benefits programs.

Amended by Chapter 196, 2014 General Session

**63G-6a-1911. Determinations final except when arbitrary and capricious.**

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

(1) Section 63G-6a-605;

(2) Section 63G-6a-702;

(3) Section 63G-6a-708;

(4) Subsection 63G-6a-709(1);

(5) Section 63G-6a-803;

(6) Section 63G-6a-804;

- (7) Section 63G-6a-903;
- (8) Subsection 63G-6a-1204(1) or (2);
- (9) Subsection 63G-6a-1204(5);
- (10) Section 63G-6a-1205; or
- (11) Subsection 63G-6a-1206(5).

Amended by Chapter 445, 2013 General Session

**63G-6a-2001. Title.**

This part is known as "Records."

Enacted by Chapter 347, 2012 General Session

**63G-6a-2002. Records -- Retention.**

(1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:

- (a) the division;
- (b) the procurement unit with independent procurement authority; or
- (c) for a legislative procurement unit or a judicial procurement unit, the person designated by rule made by the applicable rulemaking authority.

(3) A procurement unit shall keep, and make available to the public, upon request, written records of procurements for which an expenditure of \$50 or more is made, for the longer of:

- (a) four years;
- (b) the time otherwise required by law; or
- (c) the time period provided by rule made by the applicable rulemaking authority.

(4) The written record described in Subsection (3) shall include:

- (a) the name of the provider from whom the procurement was made;
- (b) a description of the procurement item;
- (c) the date of the procurement; and
- (d) the expenditure made for the procurement.

Amended by Chapter 445, 2013 General Session

**63G-6a-2003. Records of contracts made -- Audits -- Contract requirements.**

The chief procurement officer, the procurement officer, or the head of a procurement unit with independent procurement authority shall maintain a record of all contracts made under Section 63G-6a-408, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the procurement items to which the contract relates.

Amended by Chapter 445, 2013 General Session

**63G-6a-2004. Chief procurement officer's collection of information on procurement items.**

(1) To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used procurement items procured or used by procurement units.

(2) The chief procurement officer may make the information described in Subsection (1) available to any procurement unit upon request.

Amended by Chapter 445, 2013 General Session

**63G-6a-2101. Title.**

This part is known as "Interaction Between Procurement Units."

Amended by Chapter 445, 2013 General Session

**63G-6a-2102. Agreements between procurement units.**

A procurement unit may enter into an agreement with one or more other procurement units to:

- (1) sponsor, conduct, or administer a cooperative agreement for:
  - (a) the procurement of a procurement item, in accordance with the requirements of Section 63G-6a-2105; or
  - (b) the disposal of a procurement item;
- (2) cooperatively use a procurement item;
- (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
- (4) provide personnel, if the receiving procurement unit pays the procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or
- (5) make available informational, technical, and other services, if:
  - (a) the requirements of the procurement unit tendering the services have precedence over the procurement unit that receives the services; and
  - (b) the receiving procurement unit pays the expenses of the services provided, in accordance with the agreement.

Amended by Chapter 445, 2013 General Session

**63G-6a-2103. Purchases between procurement units.**

(1) (a) A procurement unit may, without using a standard procurement process, purchase from another procurement unit a procurement item that the other procurement unit itself produces or provides.

(b) (i) Subsection (1)(a) does not authorize a procurement unit to obtain a procurement item under a contract of another procurement unit.

(ii) Subsection (1)(b)(i) does not affect the authority of a procurement unit relating to a cooperative procurement under Subsection 63G-6a-2105(4)(b).

(2) A procurement unit may publish a schedule of costs or fees for procurement items available for purchase by another procurement unit.

Amended by Chapter 196, 2014 General Session

**63G-6a-2104. Compliance by one procurement unit pursuant to agreement considered compliance by others to agreement.**

(1) When a procurement unit that administers a cooperative procurement complies with the requirements of this chapter, any procurement unit participating in the purchase is considered to have complied with this chapter.

(2) A procurement unit may not enter into a cooperative procurement agreement for the purpose of circumventing this chapter.

Amended by Chapter 445, 2013 General Session

**63G-6a-2105. Cooperative procurements -- Contracts with federal government -- Regional solicitations.**

(1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:

- (a) another state;
- (b) a cooperative purchasing organization; or
- (c) a public entity inside or outside the state.

(2) A public entity, nonprofit organization, or, as permitted under federal law, an agency of the federal government, may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the solicitation issued by the chief procurement officer to obtain the contract includes a statement indicating that the resulting contract will be issued for the benefit of public entities and, as applicable, nonprofit organizations and agencies of the federal government.

(3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).

(4) A Utah procurement unit may:

(a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:

(i) directly by the federal government and not by a person contracting with the federal government; or

(ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;

(b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:

(i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;

(iii) the solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or

(c) purchase under, or otherwise participate in, an agreement or contract of a cooperative purchasing organization, if:

(i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;

(ii) the procurement was conducted in accordance with the requirements of this chapter;

(iii) the solicitation:

(A) clearly indicates that the procurement is a cooperative procurement; and

(B) identifies each party that may purchase under the resulting contract; and

(iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

(5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), if the procurement unit:

(a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

(b) does not sign a participating addendum to the contract as required by this section.

(6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.

(7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued by the chief procurement officer for the procurement of a procurement item within a specified geographical region of the state.

(b) In addition to any other duty or authority under this section, the chief procurement officer shall:

(i) after considering board recommendations, develop a plan for issuing regional solicitations;

(ii) present the plan to the Government Operations Interim Committee by



September 1, 2014; and

(iii) after developing a plan, issue regional solicitations for procurement items in accordance with the plan and this chapter.

(c) A plan under Subsection (7)(b) shall:

(i) define the proposed regional boundaries for regional solicitations;

(ii) specify the types of procurement items for which a regional solicitation may be issued; and

(iii) identify the regional solicitations that the chief procurement officer plans to issue.

(d) A regional solicitation shall require that a person responding to the solicitation offer similar warranties and submit to similar obligations as are standard under other state cooperative contracts.

(e) A procurement item that is available under a state cooperative contract may not be provided under a contract pursuant to a regional solicitation until after the expiration of the state cooperative contract.

Amended by Chapter 196, 2014 General Session

**63G-6a-2401. Title.**

This part is known as "Unlawful Conduct and Penalties."

Enacted by Chapter 196, 2014 General Session

**63G-6a-2402. Definitions.**

As used in this part:

(1) "Contract administration professional":

(a) means an individual who:

(i) is:

(A) directly under contract with a procurement unit; or

(B) employed by a person under contract with a procurement unit;

(ii) has responsibility in:

(A) developing a solicitation or grant, or conducting the procurement process; or

(B) supervising or overseeing the administration or management of a contract or grant; and

(b) does not include an employee of the procurement unit.

(2) "Contribution":

(a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and

(b) includes:

(i) a philanthropic donation;

(ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;

(iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and

(iv) the sponsorship of an event that is organized by the public entity.

(3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(4) "Governing body" means an administrative, advisory, executive, or legislative body of a public entity.

(5) "Gratuity":

(a) means anything of value given:

(i) without anything provided in exchange; or

(ii) in excess of the market value of that which is provided in exchange;

(b) includes:

(i) a gift or favor;

(ii) money;

(iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;

(iv) anything of value provided with an award, other than a certificate, plaque, or trophy;

(v) employment;

(vi) admission to an event;

(vii) a meal, lodging, or travel;

(viii) entertainment for which a charge is normally made; and

(ix) a raffle, drawing for a prize, or lottery; and

(c) does not include:

(i) an item, including a meal in association with a training seminar, that is:

(A) included in a contract or grant; or

(B) provided in the proper performance of a requirement of a contract or grant;

(ii) an item requested to evaluate properly the award of a contract or grant;

(iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;

(iv) a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;

(v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;

(vi) a political campaign contribution;

(vii) an item generally available to the public; or

(viii) anything of value that one public agency provides to another public agency.

(6) "Hospitality gift":

(a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and

(b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.

(7) "Kickback":

(a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and

(b) does not include anything listed in Subsection (5)(c).

(8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.

(9) "Procurement professional":

(a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:

(i) has procurement decision making authority; and

(ii) is assigned to be engaged in, or is engaged in:

(A) the procurement process; or

(B) the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and

(b) excludes:

(i) any individual who, by title or primary responsibility, does not have procurement decision making authority;

(ii) an individual holding an elective office;

(iii) a member of a governing body;

(iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;

(v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;

(vi) a university or college president, vice president, business administrator, or dean;

(vii) a chief executive of a local district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;

(viii) an employee of a public entity with:

(A) an annual budget of \$1,000,000 or less; or

(B) no more than four full-time employees; and

(ix) an executive director or director of an executive branch procurement unit who:

(A) by title or primary responsibility, does not have procurement decision making authority; and

(B) is not assigned to engage in, and is not engaged in, the procurement process.

(10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2403. Applicability.**

- (1) This part applies to each public entity.
- (2) A procurement professional is subject to this part at all times during:
  - (a) the procurement process; and
  - (b) the administration of a contract or grant.
- (3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:
  - (a) under contract with a procurement unit; and
  - (b) involved in:
    - (i) the procurement process; or
    - (ii) the administration of a contract or grant.
- (4) This part does not apply to:
  - (a) an individual described in Subsection 63G-6a-2402(9)(b); or
  - (b) any individual other than a procurement professional or contract administration professional.
- (5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

- (1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
  - (i) the public entity;
  - (ii) a procurement professional or contract administration professional; or
  - (iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).
- (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.
- (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
  - (i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:
    - (A) award a contract or grant;
    - (B) make a procurement decision; or
    - (C) take an action relating to the administration of a contract or grant; or
  - (ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
    - (A) award a contract or grant;
    - (B) make a procurement decision; or
    - (C) take an action relating to the administration of a contract or grant.

(2) (a) It is unlawful for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.

(b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:

- (i) award a contract or grant;
- (ii) make a procurement decision; or
- (iii) take an action relating to the administration of a contract or grant.

(3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:

- (a) the total value of the hospitality gift is less than \$10; and
- (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.

(4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:

- (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;
- (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;
- (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and
- (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.

(5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:

- (a) dismissal from employment or other disciplinary action;
- (b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;
- (c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
- (d) any other civil penalty provided by law.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2405. Discretion to declare contract or grant void -- Limitations.**

(1) Subject to Subsection (2), the governing body or chief executive officer of a public entity that awards a contract or grant to a person who engages in conduct made unlawful under this part may, in the sole discretion of the governing body or chief executive officer, declare the contract or grant to be void and unenforceable, unless:

- (a) the contract or grant relates to the issuance of a bond or other obligation

and the bond has been issued or obligation incurred; or

(b) a third party has substantially changed its position in reliance upon the contract or grant.

(2) Declaring a contract or grant void under Subsection (1) does not affect the obligation of a procurement unit to pay for a contractor's proper performance completed under the contract or grant or the value the contractor provides to the public entity under the contract or grant before the contract or grant is declared void.

(3) Subsection (1) applies only to a procurement with respect to which:

(a) public notice is provided on or after July 1, 2014, if public notice of the procurement is required; or

(b) the initial contact between the public entity and the potential contractor, for purposes of the procurement, occurs on or after July 1, 2014, if public notice of the procurement is not required.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2406. Authority of conducting procurement unit with respect to evaluation committee.**

Nothing in this part restricts a conducting procurement unit from:

(1) requiring an evaluation committee member to disclose a conflict of interest;  
or

(2) removing an evaluation committee member for having a conflict of interest.

Enacted by Chapter 196, 2014 General Session

**63G-6a-2407. Duty to report unlawful conduct.**

(1) A procurement professional shall notify the attorney general or other appropriate prosecuting attorney if the procurement professional has actual knowledge that a person has engaged in:

(a) conduct made unlawful under this part; or

(b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.

(2) A procurement professional who fails to comply with the requirement of Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in Subsection 63G-6a-2404(5).

Enacted by Chapter 196, 2014 General Session